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Thesis

THE DEVELOPMENT OF SPANISH AMERICAN CIVILIZATION IN HISPANIOLA FROM THE DISCOVERY OF AMERICA TO THE PROMULGATION OF THE NEW LAWS IN 1542.

Submitted by

Elizabeth Ward Loughran

(A. B., Trinity, 1907)

In partial fulfilment of requirements for

the degree of Master of Arts.

1928

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THE DEVELOPMENT OF SPANISH AMERICAN CIVILIZATION IN HISPANIOLA FROM THE DISCOVERY OF AMERICA TO THE PROMULGATION OF THE NEW LAWS IN 1542.

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INTRODUCTION

Christopher Columbus returned from his first voyage across the Atlantic with the story of the discovery of new lands and with suggestions and plans for the establishment of colonies that would bring glory to the Spanish Crown. Ferdinand and Isabella decreed immediate colonization, taking it for granted that the new territory would be settled in much the same way as Castile had been during the Reconquest, that is, by Spaniards moving their abode, but continuing to farm or to work at their trades as of old. Isabella adopted as subjects of Castile the new race that Columbus had found, extended to them the same rights as the Castilian enjoyed, and expected that, side by side with the Castilians, they would develop the resources of the new world, each receiving the fruit of his own labor. The sincerity of so essentially democratic a point of view, avowed with earnestness and expressed in legislation at the end of the fifteenth century, is incredible to many; the more so, because in practice, the Indian was often treated harshly and unjustly. But those who conclude that the sovereigns wrote idealistic laws but failed to enforce them when enforcement was difficult and unprofitable to the treasury, fall into error. The Spanish rulers of that time were intent on a strong

central government, and knew better than to pass laws to which they could not compel obedience, and, furthermore, they were ardently concerned about the conversion of the Indian;[3] thus it can be accepted as certain that they meant what they wrote.

The obstacle they met was in the attitude of the Indians towards work. These were indolent, weak in physical constitution, and accustomed to living in idleness in the open country, and they subsisted on roots, herbs, and fruits that grew wild.[4] The Spaniards were not able to convince such delicate and carefree natives that a civilization that involved work and restraints was beneficial. They resisted employment, for the most part, passively, by withdrawing to inaccessible mountain heights.[5] Columbus, in the year 1495, disheartened by the little revenue the colony of Hispaniola was sending to the Crown in return for the great cost of its discovery and development, determined to make them work and began assigning a certain number of Indians to individual colonists, and within a couple of years this plan became a definite economic system of repartimientos, or grants, of Indians to work either on farms or in mines for the colonist to whom they were assigned.[6] A system that left so much chance for an avaricious or unjust or cruel employer to overwork the Indians was dangerous.

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As we read its history under the various régimes in Hispaniola, we shall see that these repartimientos, or encomiendas as they were also called, were the source of most of the social ills and political difficulties that vexed the island; but we shall see, also, that Isabella and her successors tried, sincerely and zealously, first, to control the system, and, when this was found to be impossible, to abolish it.

It is not easy to lead savages even the minimum distance along the road to civilization that they must travel before they can be welded, politically, economically and socially, into a working unit with a cultured race. Many nations have tried it; (7) some have abandoned the native to his primitive state while they went on exploiting the mineral wealth of the land, giving, in return, nothing to civilization; (8) others have exterminated the native, and, transplanting their own culture together with their colony itself, have spread civilization over new territory, but have done so at the sacrifice of the aboriginal inhabitants of the land. To the Spaniard, filled with the spirit of his recent crusade against the (9) Moor, either of these courses was impossible. He set to work to spread Christianity and Christian culture, and this aim gave to his enterprise dignity and importance; at the same time, it increased a hundredfold the difficulty of the problems attendant

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upon the undertaking.

The colonies were to serve the mother country; they must pay their own expenses because the Spanish treasury had been drained by the recent was against the Moor; the physical labor of their development must be done, at least in part, by the native population; the Indian must learn to live, to dress, to work, to talk and to worship God after the manner of the Spaniard; and all this must be so done as to result in a commonwealth in which white man and Indian as brothers would enjoy the benefits of good government and of benevolent institutions. Such a commonwealth had to be moulded in the colony itself; old world forms had to be adopted to new world needs; new situations called for new legislation; in short, a civilization had to be evolved on the ground where it was to take root. We shall try to trace this evolution in process on the island of Hispaniola and see with what wisdom and completeness there was prepared in that place a new government adaptable to all parts of the vast territory that now is called Hispanic America.

The task of colonizing America was one of the most arduous ones ever undertaken by a nation, and an early historian (11) wrote that, in his opinion, none but Spain could have done it. Be that as it may, there is no doubt that in spite of tremendous dif-

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ficulties, she did realize her aim. Of her ultimate success, we have as proof the predominance of Indian stock in the nations that today stretch from the Rio Grande to the Straits of Magellan, in which the Indian is the possessor of the soil of his fathers, and the master of his own domain, as he has been, without interruption, since before the advent of the white man. The culture he enjoys is Spanish, but the political and economic regime under which he acquired this culture was Spanish only in its antecedents, its component parts were fashioned in America. The code that contains the laws is separate and different from the tables of Spanish law, and were other documents lacking, it would, of itself, convince us that Spain wrought a new and benign government for her colonies.

The Code of the Indies, the collection of the laws by which Spain ruled Hispanic America for more than three centuries, is one of the greatest compilations of laws ever made. It was begun in 1628 as a summary for the use of the Council of the Indies, which had been created by Charles V in 1524. As time went on, and the council needed to have for reference the laws made in previous years, Philip III ordered a summary. León Pinelo,(11) a famous jurist, was in charge, and he collected into 500 books, containing 120,000 leaves, a total of more than 300,000 decisions bearing on Indian affairs. On his death

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in 1634 he was succeeded by Juan Pereira y Solórzano, oidor, or judge, of the Audiencia of Lima. In 1660, a board of jurists was appointed to assist Solórzano in completing the work. It was finished twenty years later, and in 1681 Charles II decreed its promulgation and it was printed in four volumes, under the title of Recopilación de las Leyes de las Indias. A fifth edition of it was printed in five volumes in 1841.

The Code consists of ten books, each devoted mainly to one general topic. Book One deals with the relation of the state to the church, with tithes, ecclesiastical courts, etc; Book Two, with the officers of government, their appointment, tenure, duties, and privileges; Book Three, with military affairs; Book Four, with the permission to explore and the rights of the discoverer and explorer, with public works, and with mines; Book Five, with judicial procedure and with officers of the courts; Book Six, with the Indians; Book Seven, with prisons, etc; Book Eight, with taxes; Book Nine, with the casa de contratación, that is, the bureau in Seville that was the clearing house for the business of the colonies; and Book Ten, with trade privileges and restrictions, and with navigation laws. This list of contents is not complete, but represents the principal material of the code.

The laws gathered in this compilation of 1681 go

back in date to the last decade of the fifteenth century. Each law carries the name of the sovereign who first made it, and of each secceeding one who either ratified it or amended it, together with the date of his act. All documents, even from the first day of colonial government, had to be made in triplicate, one copy to be kept in the colony, one to be sent to the sovereign, and the third to be sent to the archives, which were kept first in the castle of Simancas near Valladolid, and later in Seville.(12)

This codification of such a mass of legislation, so exact in wording and date, so clear and accessible in arrangement, was a great achievement. It remains a monument not only to the skill of the jurists who compiled it, but also to the completeness of the Spanish archives, from which the laws were drawn. But the real distinction of this Code lies in the laws themselves, which, as we have said, were the expression of the new civilization growing up in the island of Hispaniola, and destined to establish itself throughout the Spanish possessions in America. The image that the Code presents is complete; no detail was omitted, no situation unprovided for. Nothing that could come up for a decision was left to the wisdom or the whim of an official; the individual had the protection of the written word. The Code of the Indies has received unstinted praise from jurists and statesmen of every

country in the world during the last two centuries, and is misprised only by those historians who, applying twentieth century ideas to sixteenth century life, blame Spain for the fact that the wealth of America filled the coffers of the mother country instead of developing industry and commerce in the colonies.

It is true that Ferdinand and Isabella, their grandson Charles V, and his son Philip II were imperial-minded; they believed in a strongly centralized government with the sanction of all law and the absolute power of veto vested in the crown;(13) they believed that it was perfectly legitimate to maintain colonies for the enrichment of the treasury and for the honor and glory of Spain. But to Isabella and her descendants every other idea was subordinate to the one great aspiration, the conservation and conversion of the Indians. "Tell us what is best for them" they wrote, not once, but often. This high purpose is the soul of the code, and informs it with a character quite distinct from that of the government of the mother country.

Spain had already developed political institutions that gave to the Crown some degree of centralized power over its numerous peninsular provinces and its Italian and Mediterranean possessions,(14) and

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It is true that Portuguese and Indians, Uruguayan Guaranis, and Mexican Aztecs fully if were in-[illegible] that believe in a theocratic centralized government, by the exaltation of all law and the absolute power of what exerted in the crown; they believed that it was peculiarly important to maintain colonies for the replacement of the treasury and for the honor and glory of Spain. But religious and war temperaments were other than and subordinate to the one great aspiration, the conservation and conversion of the lost sea. "Tell us what is best for them" they wrote, not once, but often. This high purpose is the soul of the code, and informs it with a character quite distinct from that of the government of the mother country.

Spain had already developed political institutions that gave to the crown some degree of centralized power over its numerous peninsular provinces and its Italian and Mediterranean possessions, and

as colonies began to grow in number and size in the New World, it was natural that officials sent to govern and administer justice there should bear familiar titles. But these officials, called corregidores, alcaldes, procuradores, alguaciles, jueces, oidores, etc, did not have duties identical with those of officials of the same name and rank at home.(15) While the forms were Spanish and the nomenclature Spanish, their functions were increased or decreased by act of the Crown to meet the needs they came to satisfy. So it was with other sorts of legislation. Most of it was written in answer to queries from governors or other officers of the colonies, and had an unmistakably colonial flavor. It would be difficult to trace the different laws of the code so as to show that many of them, while parallel to laws of Spain itself, are changed and adapted to new needs;(16) but this study hopes to show, by a picture of the island of Hispaniola developing from a pioneer settlement to a formally governed commonwealth, that the civilization of Spanish America wasnot transplanted from Spain but engendered in the colonies themselves.

The spirit of the Code is already recognizable in the so-called New Laws of 1542,(17) promulgated by Charles V only fifty years after the discovery of America. During the half, at least, of the period that produced these laws all colonial life was

as copying papers to grow in number and size in the New World. It was natural that officials sent to govern and establish institutions there would want familiar aides. But these officials, called governadores, alcaldes, presidentes, alguaciles, jueces, oidores, etc., did not have fixed identical sizes of officials of the same type and rank as there in the Old World and the representations thereby, their functions were increased or decreased up and down to meet the needs they came to satisfy. So it was with other areas of legislation. Most of it was written in advance to provide for governors or other officers of the colonies, and had an overwhelmingly colonial flavor. It would be misleading to chase the different laws of the code so as to show that many of them, while parallel to laws of Spain itself, are changed and adapted to new needs; but this study hopes to show, by a picture of the island of Hispaniola developing from a pioneer settlement to a formally governed commonwealth, that the civilization of Spanish America cannot transplanted from Spain but engendered in the colonies themselves.

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centered in Hispaniola, especially in its capital, Santo Domingo. In this city, Spanish American civilization took its first steps, and grew to maturity. Here, Spanish institutions were so moulded that Hispaniola was able to dower the other colonies with a government ready-formed. Before turning to look at this island and to consider its importance as the first center of colonial life, let us glance at these New Laws.

They were written by Charles as a consequence of the efforts that Bartholomew de Las Casas had been making at the Spanish court (18) to have the Indians freed from the compulsory service of the encomiendas, which was still irksome, though by this time the Indians were paid for their work on the estates of the Spaniards. The encomienda, or repartimiento, was not, in itself, an iniquitous system; as provided for in the statutes, it was a kind one, but in practice, as has been said, it left the Indian at the mercy of the individual employer, and often he endured as much as if he were a slave. A system in which it was possible for any colonist to violate the intention of his sovereigns and the spirit and letter of their instructions had to be abolished before Spain could realize her ideal of colonial civilization. Priest and layman in Hispaniola saw

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this, and Las Casas went to Spain as their spokesman to try to get Charles to do away with the encomiendas. But Charles was more concerned, in the early part of his reign, with European affairs than (19) with the Spanish colonies, and while well disposed towards these, he did not have time to devote to them, and Las Casas had to spend years hammering at the doors of the King's counselors. Various plans of amelioration were proposed during that time, but Las Casas (20) refused to be satisfied with less than a repeal of the laws that permitted encomiendas. Charles, in 1542, wrote these New Laws which were virtually a repeal. Now, the owners of the recently explored mines of Mexico and Peru resisted this repeal so violently that Charles withdrew the laws the next year, so their importance is not in what they accomplished, but, rather, that they emphasize the point of political, economic, and social progress already reached by the colony of Hispaniola. These laws, as has been seen, were urged by a considerable portion of the population of the island who saw in them an act of reparation to the Indian for the injury that had been done to him through an unfortunate combination of circumstances that had made the encomienda the lesser of evils. There were, however, some encomenderos, as the possessors of encomiendas were called, who were not in favor of the repeal, and who saw with not less satisfaction than

the miners of Mexico the withdrawal of these laws. And, in fairness to the attitude of the newer colonies, it must be noted, also, that Hispaniola had turned its attention largely to agriculture, and negro slavery was solving the labor problem there, as it did two centuries or so later, in our own South. But in spite of these facts, the New Laws of 1542 were an amende honorable which might even be regarded as Hispaniola's monument to the memory of Isabella and to the lofty ideals to which she gave utterance.

There is another reason why these new laws interest the reader of early colonial history. They were addressed to the oidores of the five colonial audiencias then in existence.(21) The Audiencia was the name of the appellate courts of Spain, and the judges who were its members were called oidores. As the judicial business of the colonies increased, appellate courts were established in them, first, in Santo Domingo, then in other parts. But, as will be seen later, the colonial audiencia was not merely an appellate court, but an advisory council to the viceroy or governor, and an instrument of government in itself. The fact that Charles addressed these laws to the audiencias showed that he considered them at that date the principal authority in America.

The development of the extra-judicial functions of the colonial audiencia took place in Hispaniola, and was one of the chief features of the growth of colonial civilization there during the early decades of the sixteenth century. After a survey of the social, economic, and political conditions that caused its peculiar development, we shall examine the institution itself as the most lasting gift made to Spanish American colonization by the pioneers of Hispaniola.

(22)

The island of Hispaniola, called Haiti by the natives, was the first one on which Christopher Columbus made a settlement. When, on his first voyage, he stopped on the coast of Cuba and inquired of the natives where gold could be found, they directed him to Haiti. There he landed on what he called the garden spot of the world. South of 20° latitude, it had a perpetual summer, tempered by ocean breezes. The soil was of the most fertile, and it not only bore indigenous roots, fruit bearing trees, tobacco, etc. in abundance, but it was adapted to Spanish fruits and vegetables, and to sugar cane. The year was a perpetual harvest time, and agriculture demanded a minimum of care. The island was crossed from west to east by a mountain chain, which began in the northwestern and southwestern peninsulas and continued from there to the east coast. From these mountains on all sides

there stretched fertile and beautiful plains to the coast. In the central part there was gold, not a great deal as compared with equal areas in Mexico and Peru, but enough to make mining profitable for some hundreds of people. Some of this gold had to be dug, some of it could be gathered by panning in the rivers.

The native population was composed of five main units dividing the island almost evenly among themselves. A chieftain king was over each section under whom were innumerable tribes, each with its own cacique. Columbus placed his first settlement, on the north coast, under the protection of one of these Kings, who permitted the massacre of the entire community. When Columbus returned on his second voyage, he had to use harsh measures to prove to the Indians that he intended to govern the island. He sent groups of settlers into the mountains where they established three small towns. He replaced, near the same site, the northern settlement which had been destroyed, and within a few years he had built, on a good harbor on the southern coast, the town of Santo Domingo, which was to be the capital of the new world and the center of its activities for more than a quarter of a century.

Thus, Hispaniola, or Haiti, was the first part of the new world settled. From there, most of the explorers of the first two or three decades set forth.

Few who were adventurous enough in spirit to leave the old world for a new one, could be content to remain on an island in the midst of the unknown without attaching themselves to at least one trip of exploration. Columbus himself, using Hispaniola as a base for men and food supplies,[23] explored and settled Cuba, Jamaica, Porto Rico, Trinidad, many of the Lesser Antilles, and Tierra Firme, the north coast of South America, where pearls abounded.[24] Ojeda,[25] Enciso, and others less well known continued the exploration of the northern part of South America until the coast from Panama to Guiana was known and held by sparse settlements. From 1510 to 1520 approximately, Ponce de Leon,[26] followed by Francisco Hernandez de Cordoba,[27] and by Juan de Grijalva,[28] discovered Yucatan, Guatemala, and adjacent sections of Central America and Mexico; Cortes[29] went to Mexico, Balboa[30] to Colombia, and Pizarro[31] tried a little exploring along the coast of Central America, preliminary to the great expeditions to Peru that he was later to undertake from Panama and from Spain. Not all of these men sailed from Hispaniola itself, many of them started from Cuba, drawing on this latter island as a granary, but in either case the permission to go was obtained from the government at Santo Domingo, and the control of all details of the expedition was in its hands.

Whether it was from chance geographical position, or because of ready winds, or because the tropics suited the people, the land settled by the Spaniards until Pizarro went to Peru in 1526 encircled the Caribbean and made, consequently, Hispaniola its center. The natural capital, then, was Santo Domingo. By contract with the Columbus family, the government of the islands belonged there, but that of the main land did not; the Crown, however, directed everything to Santo Domingo because it had had the same experiences prior to the main land, and because it was so central that it could easily reach all other parts. But the fact that more authority was given to it for expediency than belonged to it by contract made the Crown anxious to lessen the power centered in the governor, and was among the causes that hastened the development of the political functions of the audiencia.

Now if the government at Santo Domingo had done no more than execute orders initiated and sent by a foreign Crown, it would not have made any distinct contribution to the progress of nations. But it did so much more that at times it seemed as if the Crown were the subordinate power taking its directions from the colony. Many of the situations that called for legislation had no precedent in Spanish history, and

needed new laws, and the Crown depended upon the officials of Santo Domingo to explain every phase of the case, to express their own opinions as to the most feasible course of action, and to suggest the very laws that seemed right and fitting.

As will appear later, Columbus and his successors wrote to the Crown leter after letter that initiated or moulded legislation, and many other officials aided the Experor in investigations and in law-making. There were special envoys, like Zuazo,[32] and the Hieronymite Fathers,[33] there were the treasurers, and the auditors, and business agents; and there were the judges and the city representatives or procuradores. All these colonial points of view had weight with the Crown, and there was really very little legislation that was not either initiated in Hispaniola or shaped to conform to the ideas of its officials. Moreover, it was on this island that the practicability of all the early ordinances was tested, for in the case of most laws the Crown gave the colonists a year in which to file objections, and if a sufficient number of individuals brought proof of serious enough impediments, the law was withdrawn.

Hispaniola, in this way, was the laboratory in which laws were tried and tested. Before the earliest settlements elsewhere had established peace in

their territories, the forms of government and a body of laws had here had sufficient stretch of life to have matured. Mexico became the next important center of colonial expansion, but Mexico did not begin to be developed until about 1525. Hispaniola was an old colony by that time, self-conscious and almost self-sufficient. The gold of the island was comparatively so insignificant and the soil so fertile that agriculture became the main occupation of the island, and with the development of sugar plantations under the encouragement of the Hieronymite Fathers the cultivation of the soil became a paying proposition, and the various towns acquired a feeling of permanence and lost the abnormal atmosphere of mining communities. The people who wanted to get rich quickly went to Mexico or Peru, those who stayed did so to establish homes for themselves and their families. Thus Hispaniola was not only ahead of the other sections of America in date of settlement, but because of this change from gold hunting to agriculture it kept ahead of them, from the point of view of normal living, for nearly a half century. Hispaniola was the first to meet the problem of adjustment between the white and the red races, to experiment with negro slavery, to deal with piracy, to round out, in miniature, Spanish colonial civilization; it was the cradle of America.

NOTES ON INTRODUCTION

(1) Las Casas. Bk. I. Ch. 81.; Peter Martyr Dec. I Bk. I.

(2) Prescott. F.& I. Vol. I. Ch. VI.; Chapman. Ch. XX. Pp. 219-223; Merriam III. p. 182. Altamira 680, 681.

(3) D. I. del archivo XXX. p. 375; XXXI, p. 156, 209.

(4) Oviedo Bk. VII.

(5) Helps I. p. 150.

(6) Ibid. I 147-153.

(7) English in North Borneo, in South Africa; Boers in Transvaal; Portuguese in West Africa. The late Lord Cromer wrote in the Spectator: "We reluctantly admit the necessity of compulsory labor in certain cases, and we do not stigmatize such labor as slavery, when, under all possible safeguards against the occurrence of abuses, it is employed for indispensable and recognized purposes of public utility." P. 219, Western Races and the World, Oxford 1922.

(8) English in North America and in South Rhodesia.

(9) Merriman I. PP. 53-54.

(10) Herrerra Decade I. Bk. I. Ch. 14.

(11) Harrisse B. A. V. No. 247.

(12) See Vol. I of Catálogo del archivo general de las Indias. Sevilla 1918.

(13) See references under note (2) of this Introduction.

(14) Merriman II. pp. 309-311; [illegible] p. 147.

(15) Ibid. I. pp. 195, 231-234; II, p. 147.

(16) Nueva Recopilacion de las leyes de Espana mandada formar por el senor d. Carlos IV. Madrid 1805. Previous compilation was made by Philip II in 1567.

(17) See Bibliography under New Laws; Touron, years 1542-43.

(18) Helps IV pp. 143-150

(19) Merriman III. pp. 52, 80, 116, 134.

(20) Ibid. II p. 234. Helps I. p. 251.

(21) Merriman I. p. 229; II pp. 121-123. Also Chapter of this study on the Audiencia.

(22) Merriman following Vignaud says that Columbus named the island Espanola because of its resemblance, at first appearance, to Spain.

On description of island see Thatcher Vol. II, pp. 257, 300, 308, 311; As introduction to his history, Oviedo wrote a natural history of the Indies. Ch. 7-11 on Hispaniola.

(23) Thatcher II pp. 315-320; Herrera sec. I. Bk. II. Ch. 13.

(24) See references under note (8) of chapter of this study on Christopher Columbus.

(25) Merriman II. p. 215.

(26) Ibid.

(27) Herrera Dec. I. Bk. II. Ch. 17.

(28) Ibid. Dec. II. Bk. III. Ch. 1 et seq.

(29) Merriman I. p. 89

(30) Ibid. II. p. 215.

(31) Herrera Dec. I. Bk. Vii. Ch. 14.

(32) See later chapter of this study.

CHRISTOPHER COLUMBUS, VICEROY

When Ferdinand and Isabella signed the articles of capitulation[1] which made Christopher Columbus and his posterity viceroys of the Indies and gave them more than one-fifth of the net profit from the lands he might discover, neither party to the contract could guess that virtual sovereignty over a new world, and wealth which, diverted to private ownership, would bankrupt the nation was being signed away by the crown. Yet such was the case, and, as a result, the Spanish holdings in America during the tenure of Columbus were, legally, a palatinate.

Columbus governed the island of Hispaniola, either personally or through his brothers as lieutenants, from 1493 to 1500. During these years, he attempted a fourfold undertaking: to plant the church, to subdue the revolts of the natives, to organize a system of collecting tribute, and to establish simple machinery of government. He attained some measure of success, but only by struggling against enormous difficulties. In the first place, Columbus was not a Spaniard; inevitably he was regarded with suspicion, even by his loyal adherents, and by the others with jealousy and hatred. His authority he had to assert by penalties directly inflicted[2] by himself, and in so doing, he came into conflict with

personal and national sentiments which he did not understand. Remoteness bred trouble both in Hispaniola itself and at headquarters in Spain. The home government could not know which of contradictory stories to believe,(3) and the Indies kept growing unpopular at the court as the expense of their exploration and development increased without any return in revenue, and as reports of illness, defeat, and death came back from the early expeditions. For those were hard years.

At first it seemed as if colonization would be a simple matter of responding to the friendly, childlike spirit that the Indians showed Columbus on his arrival, but this spirit did not survive the first settlement. Forty-three men of the first expedition stayed to build a fortress and establish a town on the north coast of Hispaniola.(4) Columbus placed them under the protection of Goacanaric, one of the five Indian chiefs of that island. When he returned on his second voyage in 1493, there was no white man left to tell whether the Indians had been provoked to vengeance, as their chief claimed, or whether, prompted by racial antagonism, they had taken advantage of the fewness of the strangers. Columbus did not feel that there was sufficient evidence to justify killing Goacanaric,(5) so he accepted his story,

and set about building forts and towns. It was a gigantic labor to cut the trees, quarry the stones, and build the arsenal, the warehouse, the governor's house, the hospital, and the church, which together formed the plaza of each American town, and had to be built before the individual settler was permitted to develop the lot of land on which he had placed his own little straw-thatched house.(6) This was the task that first broke down the morale of the colonists.

In December 1493, Columbus chose as the site for Isabella,(7) the first town, a point on the north coast which one of the early historians says was the most unhealthful spot on the island. Here he left about eight hundred men under command of his brother Diego, while he himself went to explore Cuba. He assigned four hundred more to Alonso de Ojeda,(8) a brave and dashing nobleman, for exploration and settlement in the interior. A great many of this second expedition were noblemen, brought up in refinement, energetic with the sword but unused to the plow and pickaxe. After Ojeda left for the mountains, the rest at Isabella began work. Heat, dampness, change of water, exhaustion of food supplies, homesickness, lack of the accustomed amenities of civilization,--all played their part and as one man after another fell ill, a still heavier burden of work was left

for the others.[9] Diego Columbus[10] was a gentle soul and not able to handle the situation. The Spaniards revolted, an anti-Columbus faction sprang up, and when Christopher came back from Cuba he found open rebellion.[11] He sent the leaders home to Spain where they established a reputation for him as an intolerant, haughty man and a harsh and cruel judge.[12]

In the meantime, Ojeda and his soldiers were making their way towards the gold country. Before long, a species of guerrilla warfare was in full swing, caused and aggravated by petty acts of mutual retaliation.[13] Those of the Spaniards were more deadly and cruel by reason of superior weapons, but those of the Indians were as provocative and demanded punishment if civilization was to be introduced. The early historians[14] tell us the details of the wars; how a hundred thousand Indians, thirsty for revenge, rose under one chief, how five thousand rose under another; however, a hundred or two Spaniards, with a few cannon and a few bloodhounds, could quell revolt in any territory they could reach. Whether under Ojeda in these first years, or later under Roldan or Ovanda, they easily captured the Indians and then put them to work, as prisoners of war, on roads, in the fields, or in the mines. It is a grim page to read, punctuated with atrocities, but it is the

march of civilization. Spain wanted the race adapted, not conquered. "Let the natives be not conquered", wrote the Queen, "but taught to obey and to accept as desirable the government and faith which God through His instruments, the Catholic Sovereigns, sends to them."(15) But, when they refused to be adapted, the colonist had no alternative but war.

Thus, in Hispaniola, Columbus faced the rebellion of the Indians and the dissatisfaction of the settlers, while in Spain even his friend the Queen began to have doubts of his ability as a colonizer. She sent one Aguado(16) to observe and report on the situation, and when the latter returned to Spain in 1496, Columbus decided to accompany him(17), taking with him as witnesses two hundred Spaniards whom sickness had rendered useless to the community. Bartholomew Columbus,(18) Christopher's brother, meanwhile arrived in Hispaniola and Christopher appointed him adelantado(19), an appointment that was later confirmed by the Crown. He was an extraordinary character, well able to govern the island, and had not Christopher made a mistake appointing as chief justice Francisco Roldán(20), a brave but too ambitious man, Bartholomew would no doubt have succeeded in reestablishing the power of the viceroy. Roldán resolved to seize the government; stirring up the hatred that existed against the Col-

umbus family, he succeeded in withstanding both Diego and Bartholomew and was finally pacified only by Christopher on the latter's return two years later. Roldán had aroused the Indians of the southwest and much that is charged to Columbus's government was the deliberate fomentation of strife by this unscrupulous enemy.

Columbus, himself, made further mistakes of administration. While he was in Spain, at this time, he gathered recruits for his third voyage in order to replace the sick and the malcontents who had been permitted to return home. He issued a call for priests, surgeons, artisans, laborers, goldworkers, and musicians, and when his fleet set sail, May, 1498, he had three hundred on board. Unfortunately these were not all qualified for emigration. As a last resort, to lessen the burdensome expense of colonization by eliminating the wages paid to the settlers, Columbus had obtained from the Crown a decree offering to murderers and thieves the commutation of the death sentence to two years of service in Hispaniola, and a lighter penalty to one year.[21] "It is sometimes good," says Touron,[22] "to be able to send to colonies where they can make a new start in life, bad subjects and those that disgrace their families, but it is necessary that justice, police, and religion be well established," and, at this date, none of these had a firm foothold in Hispaniola. Only the third voyage was recruited in this manner, and

there are no statistics available to show how many took advantage of it, but the frequent references in early historians[23] leave no doubt that some did, and that these lowered the tone of society, and made living at close quarters under primitive conditions more trying. It was inevitable that the exploitation of the Indian should follow, and that the conversion of the native should become a less pressing and sacred duty.

When Columbus reached Hispaniola, he found the Roldán rebellion at its height.[24] By granting generous conditions to Roldán, and by sending other leaders back to Spain with a safe conduct, Columbus brought about a comparative peace on the island. But complaints at court against his methods, and rumors that he was trying to make himself king of the new world, were working to bring his administration to an end.[25] Only two more years were left to him. In 1500 the Crown sent Don Francisco Bobadilla as its envoy to do what he could to improve affairs. He carried a document appointing him governor,[26] but with the understanding that it should not be used unless necessary. Bobadilla used it at once, arrested Columbus, listened to the calumnies of the anti-Columbus faction, and sent Columbus chained to Spain with the case drawn up against him.

Thus ends the connection of Hispaniola with Christopher Columbus, and with the Columbus family until 1508, when his son, Diego, won his suit against the Crown and received the titles of admiral and governor, and whatever remnant of power the course of legislation left to him. The kindly reception of Christopher by Isabella, his fourth voyage, his loss of the title of viceroy, and his death in 1506 are chapters of Columbian biography but not colonial history. What is of interest to the student of the latter is the achievement of Columbus in laying the foundations for the future development of the church and of the political institutions by which the new world was to be fused into a great colonial empire.

The primary concern of both Isabella and Columbus was the conversion of the Indians and the establishment of the church. It was this that decided the Queen to finance his expedition in 1492,(27) this that Columbus presented as his title to glory at Barcelona in 1493,(28) and this was the theme or the motive of all the letters and instructions(29) from the Crown up to the death of Isabella in 1504. Twelve priests and a vicar apostolic, the Benedictine friar Don Nicolas Boyl,(30) were sent with Columbus on his second voyage. They reached Hispaniola the end of November 1493, and began at once to build a stone church at

Isabella, which they had ready for the celebration of Mass six weeks later, on the feast of Epiphany. This done, the fathers were doubtless assigned to missionary work in Isabella or on the explorations, for no further mention is made of them until the end of 1494. At that time, Father Boyl, indignant at Columbus for putting to death some of the Spaniards who claimed they were unable to do their share of the physical labor demanded for the new settlement, rebuked him by an interdict forbidding religious services. So great a blow to the community did Columbus feel this to be that he was forced to the extreme measure of denying food to the vicar until the interdict was raised. Father Boyl returned soon after to Spain, but the remaining twelve, as many as survived the fevers and pestilences, must have continued their labors, for, before long, Columbus felt the need of more priest to take care of the increasing number of Christian Indians.

Among these twelve, were four or five Franciscans, including Friar Juan Pérez,(31) who had been one of the cosmographers that urged the Queen to finance Columnus' expedition. They had established a monastery in Isabella immediately, and in 1496 they began one in Santo Domingo. They taught the Indian children an hour or two a day, and they trained the sons of the

chiefs in the practice of religion and the ways of cililization by keeping them at the monastery as in a boarding school. These Christian Indians frequently stood by the Spaniards even against their own people. Las Casas tells us the story of one who was carrying military orders to the town of La Concepcion.(32) He had them in a hollow stick and when spies from his own tribe fell upon him, he pretended to be mute and unable to answer their questions, and lame, and, therefore, in need of the stick. The friars taught the Indians the Castilian language, and in turn learned from them cortesana,(33) the Indian language which the majority of the Indians understood, irrespective of which one of the ninety-seven current Indian dialects they spoke. Thus the friars labored at language and religion, and the conversion of the island was soon in progress. In 1495, the Crown sent out a call for more friars and priests;(34) in 1497(35) and again in 1498(36) Columbus renewed the appeal, and priests responded to all these calls.

From these references, we see that the first object of Isabella and Columbus was achieved, namely that the church was functioning normally and was the center of activities of the community, a solace to those who were really of its life, and a familiar form to those to whom it had been only such a home. It was able to reach the Spaniards not more nor less than

middle in the province of religion and the ways of utilitarian by providing them an elementary and in a secondary school. These Christian teachers frequently stood by the peasants from against their and reading. The Jesuits tells us the story of one who was carrying military orders to the town of La Concepción. He had fallen in a hollow alive and when asked from old can tales "El, moon bin, he prepared to be mute and unable to change their questions, and lame, still, therefore, in fond of the still. The priests taught the Indians the Castilian language, and in turn learned from them Guarani, the Indian language which the majority of the Indians understood. Irrespective of which one of the ninety-seven current Indian dialects they spoke. Thus the priests labored at language and religion, and was conversion of the island was soon in progress. In 1684, the Crown sent out a call for more Friars and priests; in 1687 and again in 1688 Colleges received the appeal, and priests responded to all these calls.

From these references, we see that the first object of learning and religious was achieved, namely that the church was functioning normally and was the center of activities of the community, a solace to those who were weary of its life, and a tradition form to those to whom it had been only such a form. It was also to reach the educated and those who love than

it had been in Spain, and Columbus, from time to time, complains of the morals of some of his followers. But it is not from its influence upon the immigrant that its success as an American institution must be judged, but from its conversion of the natives, and this involved on their part an acceptance of new ideas, a change in mental habits and a discipline of spirit that could not be attained by large numbers, until after a stretch of more years than it was given to Columbus to labor on the new soil.

Next in importance to the establishment of the church, came the problem of the assimilation of the Indians. As we have already seen, it was not the Spanish idea to subdue them, but rather to convert them and make them partners in new-world enterprise, but the avarice or cruelty of individual men, and the accident that there was gold to be mined by natives too frail for the work, made this high ideal of partnership unattainable. As a result, warfare and bloodshed marked the Indians' acceptance of Spanish rule. Columbus was able only partially to subdue them, and later under Ovanda, and still later under Diego Columbus, other wars occurred. Wars, however, were only incidental to the establishment of the Indians in the economic status which Columbus

considered proper for them, that of laborers in organized bands under the overlordship of the Spaniards. He divided them into repartimientos, and assigned them to individuals. Virtual enslavement ensued in many cases and depopulation of the island followed, because the Indians, being unable to do the work, died in great numbers, or, being unwilling to attempt it, killed their children and committed suicide. Although it was incumbent upon Spain to devise some such system sooner or later because a wild population had to be welded into an economic structure, and although succeeding governors concurred in accepting the system as devised by Columbus, it seems probable that the repartimiento would have been saved some of its evils had the initial action been taken at a moment when the colony was not beset by so many difficult problems. Columbus inaugurated the system in the following way. In 1495, he took the moment of a victory of Ojeda's to put into effect his policy. He imposed a tribute upon the entire native population, a small bellful of gold every three months from Indians over fourteen who lived in the mining territory, and about twenty-five pounds of cotton from all others. Metal tokens were hung about the neck as receipts of tribute.(39) One chief whose tribe lived on a plain near the mines proposed that as his people

did not know how to mine, they should, instead, plant corn enough to supply all the island with bread. Columbus rejected the proposal, but the next year he accepted service instead of tribute from some villages. Thus the repartimiento began. However, the following year, 1497, when the crown authorized Columbus to grant repartimientos,(40) ~~they were specifically repartimientos,~~ they were specifically repartimientos of land, so officially the Indians had not yet come to to a part of them. In 1499, Columbus granted to the rebel followers of Roldán, by way of satisfying them, repartimientos of land with the cultivation of a specified number of shoots of yucca,(41) the root out of which the Indians made bread. Columbus thus reduced the tribes of the valleys into part-time serfs, and those of the mountains into part-time miners, neither receiving pay for their services. Succeeding governors were ordered by the Crown to pay the Indians daily wages and to regulate their periods of labor, but avarice opposed any interference with the repartimientos and it was long before reform was really accomplished.

This incipient repartimiento, more than the revolts and guerrilla warfare, violated the principles of justice and charity which the Crown held on the Indian question, and which Columbus himself professed. It is one of the inconsistencies in Columbus which no

biographer feels he has solved.[42] He ordered his officers and men to convert rather than conquer the Indians, yet he proposes their enslavement as a matter of course. Not that the collection of a just tribute in the form of labor can be considered enslavement, even in this case when it led directly to enslavement, but at this same time when he was imposing the system, he was sending home Indians as prisoners of war,[43] and even giving, as rewards or bribes, slaves to those who did his bidding in Hispaniola.

As to actual forms of government set up in Hispaniola during these early years, they were few: the alcaldes or judges of each settlement, the chief justice of the island, the treasurer, the commanders of the forts, military captains, and minor officers of the peace. The articles of capitulation gave Columbus the right to name three candidates for each office, the Crown to select one of the three, but the Sovereigns waived their right for the most part, and Columbus was practically the source of power as well as the court of appeal. None of the elaborate machinery of the sixteenth century had appeared, the affair being one between Columbus and the Crown, or the Crown's agent, Juan Rodríguez de Fonseca,[44] after-

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the crown's agent. Then Ferdinand sis Fonseca, after-

wards Bishop of Burgos, who began in 1493 to take charge of details of equipment. In 1498, Columbus asked the Crown to separate the judicial from the executive by appointing a lawyer of experience as chief justice of the island.(45) The Sovereigns had made up their mind by this time that Columbus was unsatisfactory as viceroy, and they answered this request by sending Bobadilla to succeed him.

There was really no legislation by the Crown during these years, partly because of the unrestricted power given to Columbus, but mostly because the Sovereigns had little means of knowing what was feasible in so distant and primitive a community. Letters and instructions there were: those defining Columbus's rights and privileges,(46) those to the Pope and the King of Portugal settling title and boundaries,(47) some addressed mostly to Fonseca,(48) providing for men and equipment, others acknowledging Columbus's reports and directing his judgment in details,(49) others providing for priests and churches(50) and finally those to theologians on the right and wrong of slavery.(51) Throughout them all we can trace the solicitude of a paternal government and the idealism of a devoted Queen, both intent upon the conversion and assimilation of the new race. The greatest and most democratic colonizing scheme

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There was really no legislation by the Crown during these years, partly because of the unprecedented power given to Columbus, but mostly because the Sovereigns had little means of knowing what was feasible in so distant and relatively a community. Letters and instructions there were: those defining Columbus's rights and privileges, (46) those to the King and the King of Portugal settling title and boundaries, (47) some addressed mostly to Poveda, providing for men and equipment, (48) others acknowledging Columbus's reports and directing his judgment in details, (49) others providing for pilots and crewmen, (50) and finally those to theologians on the right and wrong of slavery. (51) Throughout this all we can trace the solicitude of a paternal government and the idealism of a devoted queen, both lapsed upon the conveniences and satisfactions of the new race. The greatest and most cosmopolitan colonizing scheme

of history had begun. Columbus had faced the hardships and dealt with the difficulties incident to the incorporation into one state of this highly cultured people and a primitive and uncivilized race. It was a gigantic task, one that would have been abandoned by a man of less adventurous spirit or of less profound Catholicity.

NOTES ON CHRISTOPHER COLUMBUS, VICEROY

(1) Las Casas, Bk. I ch. 33; also appendix to Navarette, Vol. I on rights of admirals of Castile.

(2) Thatcher, Vol. II pp. 310, 495; Helps Vol. I, p. 94

(3) Ibid. p. 354

(4) Herrera Decade I, Bk. II ch. 16-17

(5) Touron Vol. I Under "year 1493"; Las Casas Bk. I, ch. 86

(6) Thatcher II, p. 258

(7) Ibid. pp. 282-291; Herrera Decade I, Bk. II. ch. 18-19; Merriman Vol. II p. 206

(8) Helps I, p. 282

(9) Thatcher, II p. 289

(10) Ibid. p. 310; Las Casas, Bk. I. ch. 82

(11) Las Casas Bk. I. ch. 90

(12) Ibid. ch. 90; Thatcher II. p. 309; Merriman II, p. 207

(13) Thatcher II, p. 313

(14) Touron under years 1494-95 following Las Casas and Herrera

(15) Las Casas Bk. I. ch. 77, 81; see also letter of Columbus to son Diego on death of Isabella in Navarette Vol. III

(16) Documentos Inéditos del archivo Vol. XXX p. 378; Herrera Dec. I, Book II, ch. 18

(17) Touron, Year 1495

(18) Thatcher II pp. 340-345, 418; Las Casas I. ch. 101

(19) Adelantado, title used by leaders of expeditions in America. Interesting article on title as used in Spain and in America in the Political Science Quarterly Vol. XXVIII, pp. 648-652. On confirmation of title by Crown see Herrera Dec. I, Bk. III, ch. 8

(20) Herrera. Dec. I. Bk. III, ch. 7: Las Casas Bk. I. ch. 148

(21) D. I. del archivo Vol. XXX pp. 343-345; Herrera Dec. I. Bk. III, ch. 2: Helps I. p. 152; Las Casas Bk. I ch. 123-126

(22) Touron, Year 1496

(23) Oviedo Bk. II. ch. 13; also Las Casas

(24) Thatcher II, pp. 417-420

(25) Touron, year 1498; Thatcher pp. 297-308

(26) Herrera Dec. I. Bk. Iv, ch. 8-9; Las Casas Bk. I. ch. 180-181: Peter Martyr Dec. I. ch. 6; Helps I pp. 168-170

(27) Vignaud. Vol. I pp. 15-17: Merriman Vol. II p. 193

(28) Las Casas Bk. I. ch. 77, 81: Thatcher II p. 48

(29) Letters referred to in Herrera Dec. I. Book VI, ch. 19-20; also Bk. VIII. ch. 5;

(30) D. I. del archivo. Vol. XXX pp. 174,178,180,304; Las Casas Bk. I. ch. 81

(31) Las Casas Bk. I. ch. 21

(32) Ibid. Bk. I. ch. 115

(33) Herrera Decade II, Bk. III ch. 4

(34) D. I. del archivo Vol. XXX. p. 343

(35) Document quoted in Herrera Dec. II Bk. III ch. 2

(18) [illegible] Ein Band zu [illegible] zu Ge-
[illegible]. Informer der [illegible] on [illegible] in [illegible]
[illegible] Ambri 3 in the [illegible] Science [illegible] Vol.
[illegible]. 1e. [illegible]. The [illegible] of [illegible] by [illegible]
[illegible] Bonnere [illegible], [illegible], [illegible], [illegible]

(27) [illegible] [illegible], [illegible], [illegible], [illegible] [illegible] [illegible], [illegible], [illegible]

(28) [illegible] [illegible]. [illegible] [illegible] [illegible]. [illegible]. [illegible].

(36) Touron, year 1498

(37) Herrera Dec. I. Bk. V ch. 3: Oviedo, Bk. III. ch. 6

(38) Thatcher II. p. 353

(39) Helps I pp. 147-148

(40) Ibid. p. 153

(41) Ibid. p. 163

(42) Merriman II p. 232: Helps I pp. 103, 149: Las Casas Bk. I ch. 21

(43) Thatcher II pp. 292-296 on Caribs. It must be remembered that the enslavement of the cannibal Caribs was accepted as legal by Isabella. Ibid. II 347, on Indians

(44) Las Casas Bk. I ch. 78; Merriman II pp. 204-205, 225; D. I. del archivo XXX pp. 174, 206, 324, 339-351

(45) Las Casas Bk. I ch. 177

(46) Thatcher II pp. 530-565

(47) Ibid. II pp. 89-209

(48) Most of the Documents in Vol. XXX of the D. I. del archivo; Merriman II, 204-205

(49) Thatcher II pp. 297-308; D. I. del archivo XXX, pp. 356-362

(50) See references under notes, (30), (34), (35), (36), of this chapter

(51) D. I. del archivo XXX p. 335

THE DEVELOPMENT OF THE COLONY FROM 1500 TO THE APPOINTMENT OF THE JUECES DE APELACION IN 1511.

When D. Francisco Bobadilla reached Hispaniola in August, 1500,(1) there were but three hundred Spaniards on the island, most of them poor and discontented, all of them anxious for permission to return to Spain. The common oath of the settler was "as I hope God may bring me back to Castile."(2) Columbus had been sending home the more hostile in every ship that had left since the Roldán rebellion in 1498, retaining only the minimum of three hundred whom the Queen kept under pay. When Columbus was in Spain between his second and third voyages, he had told the Queen, in answer to her inquiry, that while he believed that large numbers helped keep the Indians at peace by their mere presence, and were necessary if Spain was to undertake further explorations, he considered three hundred sufficient to hold the island as a Spanish colony.(3) The Queen decided to keep no more than this number under pay. And thus it happened that Bobadilla found so few; there was no inducement for others to emigrate: economic conditions at home were good;(4) no persecutions such as those that later drove the Puritans, the Irish, and the Jews to North America existed in Spain except against the Moor and the Jew, and both of these were denied the(5)

privilege of going to America; none of the three or four thousand colonists who had sought fortune under Columbus had found it; and finally, life in the new world was rude and dangerous. The colonists were in want of all the necessities except those that grew on the island and many were reduced to nakedness because of the infrequent consignments of clothes from Spain. Usually, moreover, when supplies came, the majority were too poor to buy what they needed. In a letter to the Crown not long before the coming of Bobadilla, Columbus had said that even those who had been there five years had not enough money to buy themselves a shirt. The government furnished seeds and tools, but everything else was sold by tradesmen. The prices of commodities were high in spite of several papers of instructions ordering that they be fixed by law. The miners fared worse than the farmers. The latter produced all they needed, sold food to the former and often lent them money, for the miners were nearly always in debt.(7) They received their money only every eight months when the gold was smelted, and at those times prices soared in proportion to the temporary abundance of money. Such conditions as these could not fail to produce poverty and discontentment. Bobadilla resolved to replace

the homesick with new immigration and to render content the remainder whom the fact of a change of administration made willing to stay. He gave hearing to suits and granted a general amnesty to prisoners, many of them, no doubt, political offenders against whom a new governor had no cause. He paid overdue salaries with money that Columbus had put aside, but, for some reason, had not used. He accepted whatever immorality there was among the Spaniards as something he could not remedy, while he abetted by new repartimientos their increasing idleness. The Indians became beasts of burden, and carried their masters in hammocks, the prevalence of slaves and cheap servants practically putting an end to any physical exertion on the part of the white men. Peasant and criminal travelled with a suite, a pitiable attempt at the manners of princes.(8) Never were conditions in the colony more discouraging than during these years.

It évidently seemed to Bobadilla that the best contribution he could make to the colonization of America was to make it livable for those who were already there. He attempted little that was new, contenting himself with following, in the main, what Columbus had begun. There was very little fighting during his year, but the Indian remained hostile, in fact grew more hostile because of further inroads

on his liberty due to changes in the repartimiento. The church did progress, though contemporary documents make little mention of it, the records of the succeeding administration show various institutions already so firmly established as to prove a development uninterrupted from the time of its foundation.

The only economic change under Bobadilla (1500-1501) was in the repartimiento. In order to develop agriculture without hindrance to the search for gold, he fostered a sort of partnership agreement whereby every two landowners received from fifteen to forty Indians, part of whom were to work under one master in the mines, and part under the other in the fields, the proceeds of both enterprises to be equally divided. Hitherto the Indians had been responsible only for a tribute of gold or the production of certain amounts of cotton or yucca, whereas under the new plan they became a sort of gang forced to definite periods of labor.(9) As resistance to it, many Indians refused to raise or eat food, and therefore, in order to prevent them from dying of hunger, guardians were placed over them, who maintained order, and guarded the children, to try to keep the tribe from extinction. Moreover, the Crown decreed that only a third of the tribe could be taken from their homes at a time, and, further to save their strength,

special licences had to be obtained, valid for only one month, in which the landowner had to specify the individual Indians he would employ.

With all its safeguards, this form of repartimiento was a backward step, and widened the breach between the two races. Ovanda, Bobadilla's successor, adopted it as he found it, giving each encomendero the right to employ his own Indians as he wished. But Ovanda did not promote the partnership arrangement, and thus retarded the island both socially and economically, because the Indians felt less miserable working in the fields than in the mines, and the real wealth of Hispaniola was its soil.

A decade and a half later, after the discovery of gold in Mexico and Peru, other attempts were made to develop agriculture, but Bobadilla was the first to see that the future of Hispaniola was dependent upon the success of agricultural experiments.

To help the miners, Bobadilla remitted most of the payment in gold due to the Crown.(10) This was a destructive measure from the point of view of the treasury, and also from the point of view of a political economist, and it probably influenced the Queen to give ear to Columbus' suit that Bobadilla be removed. In a letter to the nurse of Prince John,(11) Columbus

gives us a very unattractive picture of Bobadilla, but modern authorities consider this prejudiced and unfair, and accord to Bobadilla credit for personal integrity but not for brilliant administrative ability.

September 3, 1501, D. Nicolas de Ovanda,[12] commander general of the order of Alcantara, was appointed his successor and ordered to hold the inquiry[13] into his administration to which was given the name residencia[14] because the former incumbent could not leave the locality until judgment was given by his successor as to whether in his official capacity he had wronged anyone. Ovanda, after his arrival in Hispaniola, heard whatever complaints there were against Bobadilla and gave him honorable discharge.

The new governor came with thirty-two ships and two thousand five hundred men. Ovanda was a fine man, noble and highly esteemed, and many persons of rank followed his enterprise.[15] The tone of immigration was high, and when his thirty-two ships set sail from Sanlucar, Indian affairs looked brighter than they had since the day that Columbus' second expedition left Palos. But it was not long before discouragement came. When they reached Hispaniola, famine was rampant in the land. The Indians had

inaugurated a sort of pacific resistance in answer to Bobadilla's form of repartimiento. They withdrew to the high mountains and refused to plant any corn. This strike killed off native and intruder alike, and carried pestilence and fever in its wake. Homesick, and depressed by the poverty on all sides of them, a thousand of them died of starvation or disease and five hundred more lay ill.(16) But Ovanda was knight of a military order, and not readily daunted. In spite of the fact that his appointment at first was for only two years, he set to work on a constructive program, and to his administration, which lengthened out to more than six years, is due credit for a great many important steps in political organization. He completed the subduing of the island, he developed the repartimiento, he forwarded the civilization of the Indians, he fostered the church, he founded charitable institutions, he established new towns and he developed town life to a point where Hispaniola ceased to be a scattering of primitive settlements and became a group of formally governed communities. The accomplishment of all this in less than seven years deserves to be related in some detail.

The fighting under Ovanda was fiercer and more bitter than at any time in the early history of the

island. Although apparently at peace in all provinces, nevertheless the Indians were cherishing a seething resentment against the white man that was ready to burst forth at any moment. The occasion arose when Ovanda sent men around the island by boat to the north to build the town of Plata. They stopped on the way at an island off the province of Higuey in the southeast where a few years before a bloodhound belonging to a Spaniard had torn the chief to pieces. Eight of Ovanda's men tried to land on the island, and the tribe avenged the death of its chief by killing all of the eight. The rest returned to report the incident to the governor. He raised a force of three hundred or more, and sent them to subdue the Indians of Higuey.(17) The latter withdrew to the mountain heights, but before long asked for peace. This was granted them on agreement that as prisoners of war they would supply a specified amount of bread annually.

Ovanda's next encounter was in Xaragua,(18) the southwestern part of the island near the site of the present Port au Prince. Hitherto the Spaniards had left this section unmolested. Now Ovanda and an escort of three hundred foot and seventy horse set out under pretense of paying their respects to the Queen of the tribe, Anacaona. She received them and enter-

tained them with games, during which the Spaniards at a previously concerted signal, fell upon them and killed them, "treacherously and cruelly" says Las Casas. Historians disagree on Ovanda's culpability for this massacre.(19) Oviedo says that Anacaona was the central figure in a conspiracy that involved a number of powerful tribes. At any rate, now all the western Indians rose in war, but they were subdued at once, because the level surface of the territory gave them no vantage points from which to fight in ambush.

In the meantime,(20) the Indians of Higuey had ceased to supply their quota of bread, for they never accepted the white man's yoke. Now, two years after they had made peace, they rebelled again. For ten months they carried on a war that consisted entirely of Indian raids from impregnable mountain strongholds, and they were conquered in the end not by weapons but by the failure of food supply. The Spaniards, their patience exhausted, determined to capture the chief Cotubanamá and after a theatrical search did so, and such was this giant chief's reputation as a warrior that his death crushed the spirit of the natives, and thereafter, from the middle of Ovanda's administration to the end, Hispaniola remained

subdued.

The action of the Indians in withdrawing to the mountains dismayed Queen Isabella for it cut off all opportunities for converting and civilizing them. Pending the solution of this difficulty, the repartimiento seemed to her to afford a temporary remedy. Up to this time there had been no pursuance of the repartimiento as a policy of the crown; whatever official recognition it had received had been of the nature of passive toleration rather than approval. Now at the end of 1503 came a decree from Isabella:(21) "I want the governor to force the Indians to deal with the Christians, to work in their homes, to gather gold in the mines, and to plant and harvest the crops; I want them paid wages and maintenance for each day they work according to the quality of the land, the rank of the Indian, and the service rendered; I want them to do this service not as slaves but as free persons, for such they are." This gave a legal basis to the employment of Indians and made repartimientos--or encomiendas as they are henceforth called--a distribution of the entire native population among the colonists.

Ovanda divided the Indians into encomiendas that ranged from fifty to one hundred,(22) composed of

young and old, of men and women, and he kept the complement at its original number by frequent redistributions. Their periods of work were first fixed at six months in the mines, with the understanding that the remaining six months were to be spent free in tribal life; but soon the working period was extended to eight months, that is, up to the smelting. The decree contained clauses ordering that the work assigned to the Indians should be moderate, that it should be in such locality as would allow them to go to their homes at night, and that they should have periods of rest. Ovanda did not always assign Indians to their own locality, and the work they had to do was not moderate. They were too delicate to mine, and they died in great numbers before the date of their release arrived. They worked under overseers who were themselves supervised by visitadores. At first the former were Spaniards, but later legislation limited the holding of the position to Indians, as these were better able to gauge native endurance. The visitadores were Spanish officials, at times harsh and venal, and the crown was constantly concerned with the removal of the unworthy and the appointment of honest and just men. In order that responsibility for maltreatment might be placed always upon indi-

vidual employers, or encomenderos as they were called, it was forbidden to townships to hold Indians.[23] The privilege was denied also to the clergy, lest the Indian be neglected in the zeal for conversion of souls or the work for souls lessened by business cares. As can be seen from the safeguards provided and from the spirit of the decree, the system was designed as a democratic and altruistic one, to work as fairly for the Indian as for the native; but avarice and the weak constitution of the native stultified it at least in these early years in Hispaniola. History places some blame for this on Ovanda, for good and just though he was--even Las Casas, the fiery Indian advocate, pays him this tribute--he was more moved by the poverty and sacrifices of his countrymen than by pity for the Indian. The only resistance he seems to have offered in their behalf was in 1507[24] when Ferdinand on his return from a successful war against Naples gave encomiendas to two hundred of his faithful followers. Ovanda refused to fulfil the decree for those who remained in Castile, and by this refusal he put off the evil day of absentee landlordism.

The wages paid to the Indians consisted of little more than a few gewgaws, but they were supplied with clothes and furniture in communities

where the priest was successful in convincing them of the desirability of such. They were given seeds, farming implements, and cattle for breeding, and they were encouraged to become farmers. An official was placed over every five or six villages, and one of his duties was to protect the Indians from theft or unfair purchase of their tools and equipment. They were taught the idea of private property, and steady effort was made to convince them of the desirability of dressing and living like Christians.

The task of civilizing the Indians was given into the hands of the clergy, for the Spanish government recognized the Catholic Church as the greatest socializing agent that the centuries had produced. Following further instructions contained in the decree (25) already quoted on the repartimiento, the natives were organized into family groups and villages, each village having a church and a pastor. The priest instructed the adults Sundays, holidays and whatever other days they were able to attend church, and he held daily instruction for the children. He took a frequent census and was held responsible by his superiors for the souls under his jurisdiction. The church insisted on the family as the unit of society, and through its laws against marriages with pagans it was able, now that large

numbers of Indians were being converted, to insist upon monogamy and fidelity to the marriage contract in the villages that were predominantly Christian.

In 1501,[26] the Pope waived his right to the tithes due him and granted them to the vicar apostolic in charge of the spiritual affairs of the island for the construction, equipment, and endowment of churches. In every village[27] they built a little church with a straw thatched roof, and in Santo Domingo, a stone structure, later to become the cathedral, the foundations of which still remain. Ovanda established hospitals for the sick and the poor in Santo Domingo, in Buenaventura, and in Concepción de la Vega. The Franciscans, twelve of whom came with the new governor, founded two monasteries, one in Concepción and one in Santo Domingo, where they educated boys.

Thus, on the one hand, the church through its priests, its schools, and its charitable institutions, and, on the other, a well-intentioned government through its legislation and its representatives, tried to give the Indian fair treatment, and in a measure succeeded, for along with the story of wars and cruelty, and deaths from overwork, we find the record of friendship between the two peoples: of Indians fighting in Spanish ranks; of Spaniards marrying the daughters of caciques; of

Indians bearing Spanish names given them in exchange for their own as a sign of comradeship; of conversion to Christianity; of the adoption of European standards; and of the esteem of the Indian as a free man. Isabella repeated constantly her mandate that the Indians "do this as free men, for such they are". In its compulsory laws on work or education the Spanish government no more regarded the Indians as a slave than does our government regard those affected by our compulsory laws on the same subjects, and in its demands upon native labor it asked less than the latest legislation for Rhodesia demands. It was because of their reverence for the fundamental conception of the Indian as possessing equal human rights that this handful of Spaniards were able to advance civilization among savages so far and in so short a time.

While Ovanda was governor, the number of towns increased four to seventeen, the total varying from (28) year to year because established towns were at times abandoned, as in any new country. Santo Domingo was moved from the ocean side to the inland shore of the Ozama river and made the capital, and before many years it had absorbed all the social and industrial life of the island. Its public buildings and a few

of its private homes were of stone: the fortress, the governor's house, the church, the hospitals and asylums, six rows of houses built to rent, four rows owned by a pilot named Juan Roldán, and two rows by Ovanda, and, finally, a few homes belonging to officials and titled explorers. The rest were of wood with straw roofs or entirely of straw. Life at the capital was pleasant. The beauty of the natural surroundings, the fragrance of fruits and flowers, and the expanse of ocean and sky captivated the colonists, as we can see from the descriptions they wrote home, and compensated them for their sacrifice of the charms of the mother country; and, moreover, as an officialdom developed, social intercourse took on sufficient formality to give the capital of the new world the atmosphere of a Castilian city.

In January 1503, the crown established in Seville a Casa de Contratación,(29) as a central bureau to take charge of the Indies, and instructions sent to Ovanda March 1503 he was ordered to establish a corresponding bureau in Santo Domingo.(30) These bureaus took complete charge of trade, equipment of voyages, payment of salaries, court procedure, appointment of certain officials, preservation of archives, etc. The officers and secretaries of these bureaus had specified hours of work and lived

in the building itself. To the American house the following officers were appointed: a treasurer, a comptroller and a secretary, named by the crown, a business manager (factor) and a number of minor secretaries named by Ovanda. In addition to these there were the officials who were in charge of the mining, smelting, marking, and shipping of gold, and of collecting the king's share of it. The more important of these were named by the Crown or by the Casa de Contratación in Seville, acting as agent for the Crown, the others by Ovanda, as governor. The amount of gold mined increased because of the new encomienda and the larger number of Spaniards engaged in mining. As war ceased and a way of living in the Indies was found, more Spaniards came,--Las Casas (31) gives the number at the end of Ovanda's administration as ten to twelve thousand, a number that explains the rise of so many new towns, for the towns were composed entirely of Spaniards; the Indians living in villages. The Crown granted charters and shields to these towns with the same rights and liberties that we enjoyed by Castilian towns. They had corregidores, regidores, alcaldes, and alguaciles, as all the towns had since Columbus' first settlement at Isabella; they had also city representatives

called procuradores, who as early as 1508 presented grievances and requests to the Crown, and a decade or so later attended a meeting of the Cortes in Spain.

During the years when Columbus and Bobadilla represented the Crown in Hispaniola, all cases, civil and criminal, were brought before the ordinary alcaldes of the towns, appealed from them to the chief justice, or alcalde mayor, of the island, from the latter to the viceroy or governor, and, finally, to the audiencia of Valladolid or Granada. It will be remembered that Columbus asked for the appointment of a judge in order that the legislative and judicial functions should not be vested in the one person. This was denied to him, but in certain secret instructions dated 1503 (33) Ovanda is asked if he wants a man versed in law, a letrado, to hear cases of appeal. Alonso Maldonado was appointed in response to Ovanda's request.

The legislation of the period is copious and important, for it promoted or ordered the developments just described. Up to Isabella's death in 1506, it dealt mostly with the conversion, conservation and civilization of the Indian. After her death, Ferdinand went to Italy and there is a dearth of instruction from the crown. The Casa de Contra-

tación was functioning, but of new constructive legislation there is virtually none for two or three years. Then came a torrent of letters, and cédulas signed by Ferdinand and by his daughter, Juana, as queen. These were concerned primarily with revenue, with trade arrangements, and such matters, although the advancement of the Indian was not neglected.

Ovanda had more support from the home country than had his predecessors. The attitude of the court was more favorable, due, in part, to the fact that the Casa de Contratación made things run more smoothly and relieved the court from irritating details; and, in part, to the fact that the suit of Diego Columbus, son of Christopher, to recover the titles and rights of admiral and viceroy kept the court occupied, while the romantic stories of new exploration along the coasts of the main land entertained it. For this reason, Ovanda was able to give his entire attention to the problems under his eye, and when Diego Columbus succeeded him, Hispaniola had developed a consciousness of its own entity as a place in the world, and had organization enough to take care of a group of settlements in the other Antilles and on the north coast of Venezuela. Las Casas says of Ovanda, that he governed

the Spaniards with a great deal of prudence; that he was good, honest, just, and vigilant.(34) He governed all alike, laborer or gentlemen. He insisted upon the mechanics working at their trade, and when he found a man of any rank setting a bad example to the community, he sent that man home on the next boat. His estate at the end of his administration consisted of the two rows of houses he had built in Santo Domingo, one of which he left to the military order of Alcántara, to which he belonged, and the other, to the local hospital for the poor. It was said that he had to borrow money when he left for Spain, and that among all who saw him leave, there was no one who did not feel towards him love and reverence.

Diego Columbus set out from Spain in June, 1509; in appearance and character he was a worthy successor to Ovanda, tall like his father, Christopher, noble in bearing, yet simple and kind, devout and God-fearing.(35) Many of his company were distinguished relatives and persons of high rank. His wife was Maria of Toledo, daughter of the first Duke of Alba, and it had been mostly through her family that the title of admiral had been restored to the Columbus family. The capital took a new interest in life, and Diego set the standard for

new homes by constructing a fine one for himself on the shore of the river. Until his death in 1526, Diego was admiral and governor of the Indies and of such parts of the mainland as were already discovered and not assigned to the other governors. These were years of wide exploration, and to follow the noteworthy achievements under Diego's administration would take far outside the limits of this study. Yet the figure of the crown's representative was dwarfed, not through any fault of Diego's, but because of the development of the colonies and the policy of the crown. King Ferdinand never liked the Columbus family, and never approved of the great powers that had been vested in it by the articles of capitulation. When the Alba family, to whom he was under great obligation for services in the war against Naples, forced him to make Diego viceroy, he sent with him, as high officers, personal adherents who would check Diego as far as possible. Miguel Pasamonte,[36] of Aragon, was made treasurer and became a more important factor in the bestowal of royal favors than Diego. It is a standing proof of the virtue of the latter, that factionalism was controlled sufficiently to permit government to function.

Diego, like Ovanda, was opposed to granting encomiendas to absentee landlords, so the King created

a new office of repartidor[37] to take charge of the apportionment of the Indians, and appointed to it a succession of subservient henchmen. Thus, at every step, the crown thwarted Diego and minimized his authority, yet he was wise and humble enough to rule under such conditions, and popular enough, even so, to be held in respect by the colonists themselves. Another force that was putting an end to the power of an individual as the crown's representative was the development of more complex machinery of government, which we saw initiated under Ovanda, and which assumed its final form when the Audiencia was established.

The new world was breaking through its swaddling clothes during these years. In Spain, Ferdinand, first busy and then ill, had been obliged to delegate most of the Indian affairs to advisers. The Casa de Contratación was becoming efficient as the business office of the new empire, while Juan de Fonseca, and the chancellor, Lope Conchillos, of Spain, both members of the King's privacy council, formulated policies and took the place of the King in minor affairs. Incidentally they were the undesignated nucleus of what developed first into an informal council of the Indies,[38] and in 1524 into the council established by Charles V. that functioned as the supreme authority

under the King in all Indian affairs until the 19th century when Spain lost her colonial empire.(39) In the New World three judges of appeal acted virtually from 1511 as an audiencia, or court with extra-judicial powers. Their immediate function was that of appellate court before whom cases that had been heard by alcaldes and by Diego might be tried as before the King's own court. They were approved in October 1511 by a document that is held to be part of a treaty between Diego and the King.(40) The provisions call for three judges, called oidores, to dispense justice by their own authority and to join with the admiral as advisers in administering government and in determining questions of revenue and taxes. The document uses the term royal audiencia, and these judges functioned as such until the audiencia was formally created in 1526. The oidores, however, signed all documents as individual officials and the literature of the period calls them judges of appeal. The details of their functions will be examined in a later chapter.

While the morale of the colonists was higher under Diego Columbus, the economic condition of the island did not improve a great deal, in spite of the fact that the Indians had practically ceased to fight and were doing their allotted work on farms or in the

under the king in all Indian affairs until the 1770's (38) penalty was loss of colonial empire. In the New World these judges of appeal acted virtually from 1513 as an oligarchy, or council with centralized powers. Their immediate function was that of appellate tribunal, before whom cases had been heard by alcaldes and by judges might be tried as before the Audiencia sans appeal. They were approved in October 1511 by a document that is said to be part of a treaty between Diego and the King. The provisions call for three judges, called oidores, to dispense justice by their own authority and to join with the cabildos as advisers in administering government and in determining questions of revenue and taxes. The document uses the term royal authority, and these judges functioned as such until the audiencia was formally created in 1526. The oidores, however, signed all documents as individual officials and the literature of the period calls them judges of appeal. The details of their functions will be examined in a later chapter.

While the morals of the colonists was higher under Diego Columbus, the economic condition of the island did not improve a great deal. In spite of the fact that the Indians had practically ceased to fight and were doing their allotted work on farms or in the

mines. On the one hand, gentlemen and ladies of illustrious lineage lived at ease, dressed elaborately, and sponsored and graced festivals and theatrical performances; on the other, Diego Veláquez was able easily to find two hundred Spaniards to accompany him in 1511 on an expedition to Cuba, "because," says the historian, "they were in want and in debt, and they regarded the island as a prison" from which one set out eagerly on any expedition at all.

The system of dividing the entire Indian population into encomiendas was continued and the size of the encomienda was increased by enslaving cannibals of neighboring islands--an enslavement legal if the Spaniards obeyed the clause requiring them to make sure that the natives were actually man-eating savages. These encomiendas were originally granted for the duration of the will of the king. Various attempts had been made, as yet unsuccessfully, to get them for a set period. Under Diego, procuradores (41) went to Spain and asked that they be granted in perpetuity or for three generations. At length they were granted for one generation, and later still for two. Diego had been overruled on the question of absentee landlords, and at this time most of the court officers had encomiendas managed by stewards, with the gross abuses that must always follow from such

an arrangement.

The island was becoming depopulated because the Indians could not be successfully inured to the heavy work of mining and many of them died. It is one of the sad paradoxes of history that nature should array herself against the only government that started out to make the aboriginal possessors of the land sharers in colonial enterprise.

As the native population became converted, and as the number of colonists increased, the church grew so that organization into dioceses was necessary. In 1503 Pope Julius II was asked to appoint two bishops. He did so, but delays intervened and not until 1511 did bishops arrive. These bishops came from Spain, but it was provided that in the future the sons of the colonists should be considered first for appointment. The church had internal problems inseparable from any group but these did not seriously affect its usefulness to the community. Instructions to Diego, for instance, to enforce the law by which clergy had been forbidden to hold encomiendas showed that there were infractions of this law. Moreover, many priests who came, though zealous, found themselves unfitted for missionary life. On the whole, however, the monasteries and the churches both in the cities and in the villages were manned by friars and priests who were

an arrangement.

The island was however depopulated because the Indians could not be independently induced to the heavy work of mining and many of them died. It is one of the sad paradoxes of history that nations would argue honestly saying: the only advantage that accrued out to make the aboriginal possessors of the land strangers in colonial enterprise.

As the native population became exhausted, and as the number of colonists increased, the encomienda so that slavery like diseases was necessary. In such case, Indians it was asked to operate the plantations. He did so, but slaves increased and not until 1511 did disease arrive. Those diseases came from Spain, but it was probable that in the future the seas of the colonies should be constituted first for commerce. The church had internal problems inasmuch from any group but those did not sensibly affect the usefulness to the community. Impositions to Africa, for instance, in enforce is law by which slavery had been forbidden to all encomienda's cause that there were interpretations of this law. Moreover, many priests was come, to such zealous, found themselves entitled for slaveowners life. On the whole, however, the encomienda and the colonies both in the cities and in the villages were manned by Indians and mulatos who were

solving their problems intelligently and successfully. In 1510 the Dominican Fathers arrived and established a monastery in Santo Domingo. The superior of this monastery was Domingo de Mendoza, a relative of Diego Columbus' wife and brother of García de Loaysa, who afterwards became successively master general of his order, confessor of Charles V, Archbishop of Seville, cardinal, and president of the Council of the Indies. Domingo de Mendoza with Bartholomew de Las Casas worked without ceasing until death for such treatment of the Indian as was laid down in the letter and the spirit of the law. The story of their struggle falls into the next chapter.

The legislation of the first three years of Diego's administration up to the appointment of the judges of appeal touched upon every detail of colonial life. There were forty-two clauses in the first instructions to Diego,(42) and twenty-five in instructions sent to him and other officials in 1510,(43) covering such a range as the treatment of the Indians, the gradual and kindly extinction of their pagan festivals and customs, the protection of their homes and tools, the taking of a census, the maintenance of a church in each village, the establishment of hospitals, the execution of royal orders, the regu-

lation of mining, the marking of the gold, the drawing up, signing, and sealing of documents, the refusal of admission to foreigners and heretics, the building of fortresses, etc. "I hear that people hate to leave the city of Santo Domingo. Drive them out to the towns near the mines, and make those towns attractive places to live in." Such intimate knowledge of distant possessions is evidence of careful government. Many of the cedulas were on the subject of caribs who were being used to repopulate Hispaniola; others were on explorations; some on the disposal of the property of colonists who had died; one assigned coats of arms to fifteen towns. In 1509, for the first time, Ferdinand addressed letters to others than the governor; some to the officials of the Casa de Contratación; some to Pasamonte, treasurer; some to alcaldes, and some were addressed to Diego and the officials, a change that was in line with the growth of colonial government. Diego continued to govern until 1526, but so dominated by the figure of Bartholomew de Las Casas are the later years of his governorship that they form a subject apart and merit treatment in a separate chapter.

NOTES ON THE DEVELOPMENT OF THE COLONY 1500 - 1511.

(1) Las Casas Bk. II. ch. 1; Also references under note (26) on chapter of this study on Columbus.

(2) Las Casas Bk. I. ch. 150.

(3) References (1) above.

(4) Chapman p. 229

(5) Merriman II. pp. 86-94

(6) Thatcher II. p. 307

(7) Helps I. p. 188

(8) Ibid. III. p. 111.

(9) Ibid. I. p. 172 following Charleroix

(10) D. I. del archivo XXXI p. 41

(11) Thatcher II. p. 423-438: Also Navarette III.

(12) D. I. del archivo XXXI. p. 61; Herrera, Dec. I Bk. IV. ch. 12; Oviedo Bk. III. ch. 7.

(13) D. I. del archivo XXX. p. 520; Helps I. pp. 178-188.

(14) Helps III. ch. 3; Merriman I. p. 234, and II. p. 150.

(15) Las Casas. Bk. II. ch. 3.

(16) Ibid. ch. 6.

(17) Ibid. ch. 7.

(18) Ibid. ch. 9. Helps I. pp. 200-203.

NOTES ON THE BEGINNINGS OF THE COLONY 1620 - 1631.

(1) as Dexis Dk. II. Ob. 1: Also referenced under note (85) on Supply of Ship study on Volumes.

(2) Ms Dexis Dk. I. p. 180.

(3) References (1) above.

(4) Gleanings I. 290.

(5) Bradford II. pp. 30-34

(6) Dexis Dk. II. p. 307

(7) Pelts I. p. 108

(8) Ibid. III. p. 173.

(9) Ibid. I. p. 198 following Chapleck.

(10) D. I. Mel treaty XXXX p. 47

(11) Bradford II. p. 297-298; also Beauvais III.

(12) D. I. Mel treaty XXXI. p. 43; Berry, Dec. 20. IV. on. Jul 45 p. 101. c. 3.

(13) D. I. Mel treaty XXX. p. 290; Pelts I. 18. 178-179.

(14) Pelts III. ch. 2; Bradford I. p. 294, and II. p. 195.

(15) Dex Occ. 3. II. ch. 2.

(16) Ibid. ch. 2.

(17) Ibid. ch. V.

(18) Ibid. ch. 2. Pelts I. pp. 220-223.

(19) Ibid. Bk. V.

(20) Las Casas Bk. II. ch. 15; Herrera Dec. I. Bk. VI. ch. 9-10.

(21) D. I. del archivo XXXI. p. 209; Las Casas Bk. II. ch. 13. Merriman II. p. 233.

(22) Las Casas Bk. II. ch. 14.

(23) D. I. del archivo XXXI. p. 388 et seq.

(24) Helps I. p. 216

(25) D. I. del archivo XXXI. p. 149 et seq.

(26) Merriman II. p. 153

(27) D. I. del archivo XXXII pp. 1-34; Also document referred to in (23) above. Merriman II p. 153

(28) Herrera - Introduction. ch. 6

(29) D. I. del archivo XXXI p. 139. Merriman II pp. 224-226. Altamira 687

(30) Document referred to in note (25) above

(31) Book II ch. 40

(32) Herrera Dec. I Bk. VII ch. 2

(33) D. I. del archivo XXXI. pp. 150-156

(34) Bk. II. ch. 50

(35) Thatcher II pp. 620-626

(36) Herrera Dec. I. Bk. VII. ch. 3; Oviedo Bk. III. ch. 12

(37) D. I. para la historia. Vol. I. pp. 50-96; Herrera Dec. I. Bk. X. ch. 6

(38) Las Casas. Bk. III. ch. 6

(39) Ordenanzas del real consejo de las Indias.
Madrid 1747

(40) D. I. para la historia. Vol. II. pp. 275-285:
And Vol. XVI. pp. 265-375.

(41) Las Casas Bk. II. ch. 52

(42) Document referred to in note (23) above

(43) D. I. del archivo XXXII. pp. 70 et seq.

A TURBULENT DECADE

In the last ten or more years of Diego Columbus' administration, the problem of holding the Indians in encomiendas was threshed out on both sides of the Atlantic;(1) enthusiastic advocates espoused the right of the Indians to their own mode of existence, and held up to the view of the centuries examples of maltreatment of them by Spanish employers and officials, while officials, chroniclers, and the body of colonists presented to the crown arguments on the justice and the advantages of things as they were. It is the most widely known phase of early Spanish colonial history, because it was the most controversial, and while, in so far as it affected the main land, it did not help the Indian until after the new laws of 1542, in Hispaniola his lot became an easier one, and, with the diminishing of racial contention, the normal problems of peaceful existence were able to claim more attention.

The Dominican Fathers under their superior Domingo de Mendoza, founded their monastery in Santo Domingo in 1510 and began their work for both Spaniard and native, reminding the one of the standards his religion set for him, training the other to see the wisdom of such standards. They listened to plaints brought them by the native, they observed the relations of the two races, and finally, the Sunday before Christmas, 1511, one of their number, Antonio Montesino, attacked from the pulpit the iniquity of punishing the weak for failure to accomplish work for which they were physically unfit. He called the encomenderos slave drivers, and denounced

especially the officials who permitted existing abuses and who themselves, as encomenderos, added to them. After Father Montesino's sermon, the officials gathered for action at the home of Diego Columbus;they demanded that the same priest preach the following Sunday and retract all he had said. Father Montesino agreed to take the pulpit as asked, but instead of retracting, he reiterated all he had said, and, in addition, refused the sacraments of the Church to all who persisted in treating Indians as slaves. Diego wrote to the king, and Pasamonte, the treasurer, addressed a special complaint to his friend the chancellor, Lope Conchillos. The King, now old, and exasperated by excessive cares, wrote an angry letter to the provincial general of the Dominicans in Spain, and the latter wrote to Santo Domingo quoting the King's letter and suggesting that Father Montesino fix things up if no actual wrong be worked by the retraction of his words. In the meantime, the officials had sent a Franciscan friar, Father Alonso de Espinal, as ambassador to the court to obtain action against the Dominicans, and Father Montesino had followed shortly in another ship to present his point of view. It is an interesting footnote, one that emphasizes the need of constantly testing historical generalizations, that it was a layman, an encomendero,who paid the Dominican's way across to Spain.

In Spain, Father Espinal was given ready reception but it was with difficulty that Father Montesino forced his way into the presence of the King to read him the memorial he carried from his monastery. The King at last granted him an audience, and was amazed to learn that such conditions existed. He or-

dered the members of his council who had been attending to Indian affairs to meet with theologians to define freedom as applied to the Indians and to determine upon the treatment due them. This commission gave form to the principles that were afterwards reduced to the thirty laws called the Laws of Burgos of 1512. These were, for the most part, a repetition of the legislation on the good treatment of the Indian that had been issued from time to time during the last twenty years, but with additional restraints on the visitadores and restriction of the number of Indians each encomendero could hold. These laws were of no assistance, and the Dominicans sent another delegate to the court to say so. The commission who had drawn up the laws of 1512 convened again in 1513 and amended the laws, changing the details somewhat but not helping in any marked degree the existing status of the native population.

At this point Bartholomew de Las Casas appeared. He was of a family, originally French, who had settled in Sevilla in the time of Ferdinand III and had received honors of the nobility in recognition of services against the Moors. Bartholomew's father had accompanied Columbus in 1493, and he himself had come with Ovanda in 1502. He was a lawyer, with degrees from the University of Salamanca. He took part in explorations and became an admirer and friend of the Indian race. He decided to become a priest; he studied theology, of which he had had considerable in the course in law at Salamanca, and went back in 1510 to Spain to be ordained. He was not, however, assigned to any church, and, on his return, he settled in Cuba and together with one Peter Rentería possessed an en-

comienda, Las Casas directing his attention to agriculture and Rentería turning to mining, after the plan Bobadilla had tried to impose generally. In 1514, encouraged by some Dominicans who had come to Cuba, Las Casas preached a sermon on Pentacost Sunday, taking as his text verses from Ecclesiasticus ending with, "He that taketh away the bread gotten by sweat is like him that killeth his neighbor." He freed his slaves, that is the Caribs who had been given him, and let return to their villages whatever Indians he held in encomienda. He inaugurated a crusade in their behalf, preaching from pulpit to pulpit wherever Spaniards were gathered.

In 1515, he went to Santo Domingo and from there to Spain to wage war at the court. He took with him a memorial depicting abuses and purporting to prove that no laws that permitted the encomienda to continue to exist could enforce just dealings with the Indians. He was granted an audience with the King, and was awaiting a second one when the latter died. Las Casas was obliged to delay two years waiting to the appointment of the regents who ruled Spain until the arrival of Charles V. These regents, Cardinal Francisco Jiménez de Cisneros of the Franciscan order and Adriano of Utrecht, afterwards pope, received Las Casas and assembled a group of lawyers and theologians to help them understand all phases of the situation. It was their first introduction to Indian affairs, and they showed themselves willing to go to great lengths to insure justice to the natives. They appointed Las Casas Protector of the Indians, they chose a commission of the Hieronymite Fathers to

go to Hispaniola to "reform the Indies," and they sent Alonso de Zuazo, an eminent jurist, to take charge of legal reforms with absolute power to render final decision on any legal matters.

(2)

The Hieronymite Fathers were instructed to study the situation carefully, to leave the encomiendas if it seemed best to do so, or to destroy the system if such a measure seemed wise and practicable. In the latter case, they were to proceed slowly because it would be a very delicate undertaking. During the time they devoted to study and observation, they were urged to improve the existing Indian towns and to add to their number. All the natives living in the vicinity of mines were to be domiciled in towns of three hundred, in houses built under Spanish direction in conformity with the ideas and the manner of living of each tribe. The Indian chief or cacique was to be the alcalde, and his house was to be larger and better than the others, and situated on the plaza near the church. A hospital for the poor, the sick, and the aged was to be built in each town and placed under the direction of the cacique and the management of a man and wife. A Spaniard, a married man, chosen because he was especially trustworthy, was to be made administrator of every three or four towns, and assigned to visit encomiendas, confer with caciques, protect Indians from overwork and injustice, see that they lived in families and cared for their live stock. He was to join his efforts to those of the priest to get the Indians to wear clothes, to sleep in beds, to eat from tables, and to use and guard their tools. Sufficient land for the support of a family was to be given to each inhabitant

of the village, the rest of the surrounding territory to be held in common for pasture. A generous amount of live stock was to be assigned to each village, to be held in common until the Indians grew able to take care of their own. They were not to exchange, sell, give away, or gamble their possessions without permission of the priest or the administrator. Nothing that could instill the idea of private property was to be overlooked. Part of the gold mined by the village became the property of the Indians, but until the individuals learned to handle money, the cacique, under the advice of the administrator, was to meet their obligations for their live stock, tools, and homes, to buy clothes, furniture, hens, etc., for them, and to save whatever balance remained for their future. Only one third of the male population between the ages of twenty and fifty years could be absent on encomiendas, and women, children, and the aged, could not be required to work. The hours for labor in the mines were from sunrise to sunset, with a three hour siesta at noon.

Officials of these towns were to be named by the cacique and the priest, and, in case dispute arose, the administrator cast the deciding vote. Punishment of crimes meriting not more than whipping was left to the cacique, but the latter was under Spanish jurisdiction. Spaniards were to be punished on evidence given by Indians, if after careful sifting the judge was satisfied that it was trustworthy. Priests were charged with the education of the Indian children. They must be taught to read and write Spanish, and remain in school until they were nine

years of age. All caciques and other native personages must be taught Spanish.

There was little that was new in these instructions. They represent, for the most part, a repetition of the legislation that began under Columbus, and was worked out in detail under Ovanda. Some of the previous laws were, to be sure, not being enforced, and by writing them into these instructions Cardinal Cisneros gave the Hieronymites an opportunity to set about enforcing them; also, the detail in village organization represents a genuine advance, much of it dictated by Las Casas; but the most noteworthy step forward was the appointment of the investigating commission itself, with its wide scope and extensive powers.

The Hieronymites sailed from Spain in November, 1516, and were received cordially in Santo Domingo a little more than a month later. They were greatly impressed by the experiment in colonization that met their view and they wrote to the Cardinal that, in their opinion, the settling of the Indies was one of the most notable things a prince had ever done. They recommended that agriculture be encouraged, they assured the colonists that they would not change the existing order of things without careful consideration, and they took up their abode in the Casa de Contratacion of Santo Domingo, to observe all things and report on them to the Cardinal. They remained for nearly three years, during which time they established twenty-six new Indian villages, following as closely as possible the instructions we have quoted. They made visitations of the is-

land every six or seven months, sometimes going into the mines and questioning the Indians on their grievances. They punished officials who neglected their duty and encomenderos who abused their Indians. They improved living conditions, but they did not destroy the system of encomiendas. It seemed to them that it was not unjust, and that, under supervision, it could be humane. Las Casas who had returned to Hispaniola and was trying experiments in colonization on the mainland, disapproved of the work of the Hieronymites for he was not contented with any solution short of complete independence for the Indians to live where and as they pleased. His view has been popularized through modern accounts of it because his history is very readable. He was devoted to the cause of the weak, but where he could not influence others to agree with him, he attacked the good faith of their opinions. There is much to be said for the system of encomiendas; it was compatible with the freedom of the Indian, and it was successful in bringing about a rapid amalgamation of a highly civilized and a completely barbarous mode of living. It was to endure for more than two centuries after the Hieronymites, but they are among the forces that reformed it and made it tolerable. Besides their work for the Indians, the Hieronymites surveyed the church, the government, the administration of justice, the economic conditions prevailing in the towns and cities, the settlements on the other Antilles and on the north coast of South America, and the rules and restrictions of trade and navigation. On all these they made reports and recommendations, and wherever their powers gave them the right, they suggested or accomplished

changes by which abuses were corrected and ills were remedied.

Alonso de Zuazo,[3] who was sent as a supreme judge to study advisable forms of legal procedure in the colonies while the Hieronymites devoted themselves to the political, economic and religious aspects, was a thoughtful observer and a wise counselor, but because of the extreme unpopularity of his mission he found himself balked at every turn. He had been invested with unlimited power as judge, both to hear appealed cases and to investigate and order the removal of the king's officials. He must have set to work at once to improve the quality of the service given the Crown, because it was but a short time before he found himself disliked by the followers of Diego Columbus and also by the Crown's appointees, Pasamonte and the rest, who had little sympathy with Diego's friends. They complained[4] of the number of Indians Zuazo had working for him, of the size of the house he was having built for himself, and of the amount of salary that was being paid him; they addressed indignant memorials to the Crown saying that he was destroying justice by suspending judges, that he was causing anarchy by ruling against the Crown when occasion arose, that he refused to pay salaries on request of Diego Columbus, in short, that he was "full of spite against all good men." He worked until the end of 1520, conquering the difficulties placed in the way of reform, and strengthening whatever weak spots there were in court procedure, those arising from the incapacity and shortcomings of individuals as well as those due to the lack of adjustment of Spanish law to the needs of a new world.

This period was one of transition for Hispaniola. It was

losing its position as the center of the colonies. As yet it remained the political center, but its insignificance as a place in which to grow rich had become clear to all, for there was little gold there, and that little had been mined as intensively as methods permitted and the long transportation from the mountains to the shore made profitable.

Mexico and Peru were being explored and the great wealth of their mines of gold and silver and emeralds was attracting thousands from Spain and draining Hispaniola of its most adventurous spirits. Santo Domingo, Concepción de la Vega, in fact, all the cities and towns of the island lost from a half to seven-eighths of their citizens of high rank. Of fifty noble citizens of Santo Domingo, "forty, fine, elegant, gentlemen, rode forth to return no more." But if Hispaniola was losing its best men, it must also have been losing its worst: the transient who intended to go home after making a fortune, the restless who had not the stability needed for pioneer work, and the unfit who had made a failure of things and were ready to move on to any place. Those who remained, having made their choice, were disposed to work and to make sacrifices in order that Hispaniola might be a desirable home for their posterity.

"Hispaniola had the best soil in the world," wrote not one but many chroniclers,- "full of brooks and gently running rivers, with a climate extreme in neither heat nor cold, and a vegetation that was always green." The year permitted two, three, and even four food crops. The Hieronymites were struck by the fertility of the land, and wrote to the Crown that the

island could be a source of very great income if the people would give up mining and become agriculturists, that there were many things that could be grown there with profit, but the most profitable and staple was sugar cane. With the sanction of the Crown, they appointed a committee of four or five men from each town on the island to develop sugar plantations near the coast. The Hieronymites lent the planters what money they had of their own and then advanced them some in the name of the Crown. Negroes had been imported from Africa from 1510 on, and negroes were especially adapted to sugar plantations. The sugar industry prospered: in 1520, there were some plantations with as many as three hundred negroes, and on forty plantations the presses were run by water;(5) in 1526 we have a report of the industry as flourishing; in 1540, a petition to the Council of the Indies asked that sugar from other places be shut out of Spain.(6) Sugar-planting has remained until today the main industry of the island, and is, in a true sense, a monument to the three Hieronymites who through wisdom and far-sightedness, devotion to the interests of Spain, and solicitude for the economic conditions of the colonists, worked hard to establish sugar raising as the chief means of livelihood.

Negroes in great number were brought into Hispaniola during this decade and the succeeding one, for the island had been depopulated of its native tribes by war, pestilences, hunger strikes, and overwork, and the caribs or Indian slaves were more useful on the mainland because of its greater wealth. There were problems connected with negro slavery, problems for church and for state, but as they were in every detail those inherent in negro slavery, wherever permitted, they do not form a part of this study.

While the Hieronymites were in Santo Domingo, they were a de facto government, although Diego Columbus was admiral and governor and, thereby, invested with chief authority. Diego wrote many of the petitions to the Crown, and signed many more together with his officials, sometimes with the treasurer, the fiscal and the contador, sometimes with the judges of appeal, later called oidores of the Audiencia, and one he signed with the city representatives or procuradores.(7) This latter document, which bears the date 1519, shows us that Hispaniola, having outgrown the problems of early days---wars, Indian uprisings, foundation of towns, government machinery, church building, etc.--was now facing those of an established commonwealth, such as the adjustment of taxes, questions of trade, the relation between the city governments and the Audiencia, etc.

Hispaniola needed a more flexible government, not only because of its distance from Spain but more because of its jurisdiction over the new colonies that were being established on the other islands and on the mainland bordering the Caribbean Sea. As was seen in the Introduction, Hispaniola was the point of departure for most of the early voyages of exploration, and for these and some of those that set out from the mother country, it supplied food. Cuba, Jamaica, and San Juan, or Porto Rico, had had the closest of relations with Hispaniola from the beginning. Columbus was viceroy, and his successors governors, of all these colonies and their lieutenants were sent to explore, to settle, and to govern as subordinate officials. But even when the mainland began to be settled under governors appointed directly by the Crown, the seat of authority remained in Santo Domingo. It was to the King's representatives there that disputes had to be

referred, and from them that permission for further explorations had to be obtained. A government stronger than that of an individual appointee of a crown had to be created in response to the demands of the growing territory. The King chose to use the body called the Audiencia, a sort of supreme court, which was inherently Spanish and had developed gradually through many centuries of Spanish history. The Audiencia of Santo Domingo and later those of other sections played such an important part in the colonization of America and were invested with so many extra-juridical powers that a digression into the history of the institution for correct appreciation of its nature and functions.

NOTES ON A TURBULENT DECADE

(1) Las Casas Bk. III - gives the narrative of this chapter of the study. Herrera follows Las Casas here as elsewhere. Helps I. pp. 209-250

(2) Las Casas as above; Oviedo Bk. IV Chap. 2: Herrera Dec. II Bk. II Chap. 3-22. D. I. para la historia Vol. I pp. 173-366, correspondence between Cardinal Cisneros and the Hieronymite Fathers. Helps I pp. 469-489

(3) D. I. para la historia Vol. II pp. 375-379; D. I. del archivo. Vol. I pp. 292-315; Ibid. pp. 416-421; Ibid. pp. 374, 377-390; Ibid. pp. 470, 548; also Las Casas, Oviedo, and Herrera as cited in Note (2) above.

(4) D. I. del archivo I pp. 374 et seq.

(5) D. I. para la historia, Vol. I p. 416

(6) Ibid. p. 550

(7) D. I. del archivo XXXI pp. 383 to end.

THE RISE OF THE AUDIENCIA

The judicial systems of Spain were always a compromise between two opposing tendencies, a mixture of two contrary forms of political organization, the one struggling, usually in vain, to unify the government of the peninsula, the other the result of democratic forces of decentralization. The history of Spain from the establishment of Roman law there to the union of the crowns of Castille and Aragon under Ferdinand and Isabella made this inevitable.

In the third century, when Caracalla (1) bestowed the rights of citizenship on all subjects of the Roman Empire, he gave to the whole peninsula the same tables of law, but he could not cast into one form the machinery for the administration of justice, for this was by nature the business of a locality, and the localities had been absorbed into the empire or settled with the various legal statuses of camp-towns, mining centers, colonies, or municipalities.

In the sixth and seventh centuries the Visigothic kings endeavored to further the process of unification, but the very means they took increased the particularism. Liuvigild (2) in the year 579 cut the three Roman provinces into eight, placing a duke over each province, and a count over each of the chief cities, both governors being made the source of justice. In addition,

he created curias and councils to hear and decide civil and criminal cases. Thus he built up a complex organization which might have functioned had the people been less heterogeneous, but under which, actually, justice continued to be meted out according to the traditions of each political unit. Moreover, the Visigoths settled throughout the country rather than in the cities as their predecessors had done, and thus to the cities were added new centers of population, centers later to develop into fiefs, and to the elected or appointed city and provincial magistrates was added a new class of rulers, Hispanic-Roman and Visigothic land owners.(3) Chindaswinth, the Visigothic king of the seventh century whose name is linked with the legal code called the Fuero Juzgo, attacked the mighty problem of the fusion of the Roman and Visigothic legal systems into one by the creation of new laws that would retain the best of each. By this code, the administration of justice was placed in the hands of the king, but the realization of the ideal of the Fuero was destined for the future, and even in matters in which the law specifically prescribed the contrary, the ancient customs continued to prevail.

During the invasion of the Moors,(4) the caliph and his functionaries represented the law, but so alien were the Moorish institutions that they had no influence on the development of Spanish law, and as the reconquest

advanced, the old tribunals took up their life at the point at which it had been interrupted.(5) However, the invasion, by cutting off the relations between the various regions, and destroying what had been recognized as a central power and a common administrative organization, had permitted inherent separatism to flourish, and as the reconquest pushed southward, Spain emerged, province by province, repossessed of her traditional forms.

From this point on for the next five centuries, we find at least two distinct lines of political development, due in part to the fact that the reconquest advanced from two points, the crown of León and Castile, and the county of Barcelona. In so much as we are interested in the antecedents of the Audiencia, a creation of the crown of Castile, it is enough for our purpose to follow the judicial arrangements of this kingdom, keeping in mind that were we to turn to the East we should find many essential differences.

By the nature of the reconquest, a premium was set on the frontier estate and on the frontier town; only by fortifications could war be successfully maintained, only by constant new settlements could the land gained in war be held. Thus, charter after charter was granted, so many, and of such variety, that they had the effect of delaying for some cen-

turies the unification of the administration of justice. These charters were, in general, of three classes: those of pueblos de solariego, cities owned by barons, those of the behetrías or cities under the protection of barons, and finally those of the free cities, but within each class there was a wide range of privileges granted.

The barons, called ricos hombres, ~~were~~ received from the king, as a favor and only for the duration of his will, jurisdiction on their own lands--the king or his representatives not being allowed to enter except for judgment on certain crimes. The church had its own code, effective on its own estates. Direct administration of justice by the crown obtained only in the realengas or royal domains.

In the course of the reconquest, as the people came down from the mountains of the north, or returned from France or the Canary Islands or the Azores, or elsewhere, they settled in the newly regained frontiers and received as reward more rights than they would have had on baronial territory. One of these rights was that of selecting their own protector or lord, for some protection they had to have until the time when the frontier should leave their region far behind it in a zone of comparative safety. Thus they

received the name of benefactoria or behetrías;[6] they were of two kinds, behetrías de linaje which had a choice only among the members of one house, and behetrías de mar a mar which could select any one in the land, changing "up to seven times in one day" until they were satisfied. Most of the behetrías were new settlements, but some were pueblos de solariego[7] that had obtained new legal status because of the exceptional service of the inhabitants or their lord's loss of grace in the eyes of the king. In all these behetrías the king was an overlord and the nobility did not have such broad rights as they possessed on their own territory in their pueblos de solariego. The king administered justice only in a few of them through his officers, but he possessed the right in all of them to pass judgment upon and to remove the functionaries appointed by the lord. Had the king found it possible to exercise this right, it would have hastened the unification of the administration of justice, but even such kings as Alfonso VII and Ferdinand III had to permit more independence to the lords than was specified in the documents. These behetrías were essentially transient: they met a temporary need and the difficulties in their organization prevented them from becoming munic-

palities with definite charters, such as were to develop in the following century. Anarchical conditions were produced in the behetrías de mar a mar by the constant changing of masters, and in the behetrías de linaje by dissension in the family of the lord, resulting at times in three or four lords for the one town. Moreover, because the extent of their liberties varied according to the services the behetrías could render to the king, and also according to the grade of nobility of their lord, fueros or charters of wide range were granted, and these often increased the embarrassment of a sovereign who had in mind the unification of his kingdom. Alfonso X forbade the formation of more behetrías without special permission of the crown. Gradually, they decreased in number, some seeking a new legal status, willing even to become pueblos de solariego, many absorbed into the new municipal organization of the villa, some enduring as behetrías down to the time of the Catholic Sovereigns.

(8)

The villa or free city made its appearance in the tenth century, a mediaeval expression of the inherent democracy of the Spanish peoples, which was to be a thorn in the side of every monarch down to

Philip II. As town after town was recaptured from the Moor and as new towns were needed as outposts of the reconquest, the king was obliged to offer extraordinary rights of self-government to all who would take up their residence in them. The rights accorded varies,--for reasons similar to those operating in the establishment of the behetrías and with similar results in the retardation of the codification of laws for the realm,--but even the least liberal of them remain one of the marvels of history. Authority was vested in a democratic body, called a concejo, composed of the vecinos or property owners, which appointed all executives and officials. Especially generous were the judicial rights ceded to it. As the people returned after a century or more of exile and anarchy, it was the old Visigothic traditions they knew, and in the fueros the kings recognized these and permitted communities to follow them though they antedated the code of Chindaswinth.

The concejo appointed a judge, juez, who took the place of the one formerly appointed by the king, although the crown still retained the right to appoint one coexisting with that of the concejo.

Alfonso V in 1020 (9) promulgated a law that there should be judges named by the crown in all the cities

of the realm, but it is certain that the royal representative did not function in the cities with liberal fueros.

During the eleventh and twelfth centuries, kings continued to grant fueros, the concejos kept gradually acquiring the powers claimed by the crown or previously wielded by the count, while the forms of justice remained as cantonal as in previous periods. The judges appointed by the concejos began to be called alcaldes, due to Mozarab influence. Quarrels involving a struggle for both judicial and political power between the nobility and the king gave rise to conditions of anarchy in these centuries and the two succeeding ones. Judges, having no fear of removal, were unrestrained, and justice was executed arbitrarily. Whenever the pressure of warfare lessened, the sovereign tried to apply the remedy of concentrating justice in his own hands, but it was an exceedingly difficult task. From the point of view of unification, things were at their lowest ebb. Municipalities thought as petty kingdoms and the preservation of their fueros had become their fetish. However, in the thirteenth century, the royal power began to assert itself with some results, and from this time on the crown was unremitting in its endeavor to win back the powers it had ceded to communities and to realize the ideal set down in the ancient laws.

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by the concessionaires began to be called aldermen, due to Ger-
manic influences. Conversely involving a struggle for
both judicial and political power between the nobility
and the king were prone to conflicts of authority in
these counties and the two succeeding ones. Judges,
having no fear of removal, were unscrupulous, and jus-
tice was exercised arbitrarily. Whenever the occasions
of warfare lessened, the sovereign tried to apply the
remedy of concentrating justice in his own hands, but
it was an exceedingly difficult task. From the point
of view of unification, things were at their lowest
ebb. Municipalities thought as petty kingdoms and the
preservation of their forces had become their faith.
However, in the thirteenth century, the royal power
began to assert itself with some results, and from this
time on the crown was unremitting in its endeavor to
win back the powers it had ceded to communities and to
realize the ideal set down in the ancient laws.

Alfonso X, called the Wise, reigned from 1252 to 1284.[11] He became through his legal codifications the source of all juridical advance down to the time of the Catholic Sovereigns. Though prevented by innate personal weaknesses and by political circumstances from putting into effect the reforms he so majestically conceived, he was scholar enough to know that Roman law fitted Spain better than Visigothic, and statesman enough to see that what he wrote could be worked out in the future. His Fuero Real and the second and third parts of his Siete Partidas deal with the unification of the administration of justice in the kingdom. The Fuero Real was a compilation of the best municipal laws and of the Fuero Juzgo, adapted to the needs of the century, and designated to regularize the municipalities. It naturally restricted the privileges of the nobility and therefore met with great opposition. Alfonso tried to introduce it gradually, hoping to win supporters for it progressively as its benefits to the public good appeared, but unfortunately Alfonso let himself be overruled by his nobles, and in 1272 the code was derogated in Castile though it continued to be observed in the other provinces under the Castilian crown. It rather served as a source book for future kings than accomplished actual results. The second part of the Siete Partidas, the later of Alfonso's two

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codes, established the authority of the crown as benevolent but absolute to the last degree. In the next part of the code, this absolutism as operating through the courts was worked out in detail. Every officer was designated, every duty was specified, every title of procedure was provided for; and everybody, from the minor royal appointee in municipality, township or countryside to the king himself as court of last appeal, owed official existence to the crown and drew entire power from it. The Siete Partidas was not adopted as law of the realm until 1348 when Alfonso XI at the Cortes of Alcalá (12) petitioned for its establishment. It remained in force, where possible without the nullification of recognized fueros, down to the time of the Catholic Sovereigns.

Thus far we have examined, on the one hand, the forces which were disintegrating the legal system of Castile, and, on the other, the legislative efforts of the crown for centralization and unification. We shall now see that sovereigns beginning with Alfonso X took active measures to secure the success of this legislation by the actual creation of new officials and new judicial bodies. At a meeting of the Cortes of Zamora in 1274, Alfonso gave legal form to a curia of kings advisers (13), which had existed for more than a century, by creating a supreme tribunal composed of twenty-

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five alcaldes de corte, nine from Castille, six from Extremadura and eight from León. They were not to be ecclesiastics, and half or a third were to be in continual attendance at the court. The King set Monday, Wednesday, and Friday as the days when he himself would hear appeals, but later he had to limit his attendance to Friday and the alcaldes were allowed to sit in judgment under the leadership of an adelantado del rey. Thus they began to acquire a jurisdiction of their own. This tribunal did not function long, nor could Ferdinand IV get permission to revive it at the Cortes of Valladolid in 1299, but in 1312, at a meeting of the Cortes in the same city, Ferdinand IV succeeded in reorganizing and reestablishing it with twelve alcaldes, four each from Castille, León, and Extremadura; six to remain in constant attendance half the year at the court. It moved with the king from city to city and all criminal and civil cases appealed to the king were heard by it. However, it was short-lived, and except that it prepared the way for the Audiencia and developed the idea of independent jurisdiction for a supreme court, it accomplished little. It was a deliberative body converted into a judicial one, a court of appeal set up from above with no supporting arch to make it a

keystone. But before another half century passed, officers of the crown possessed of judicial powers--and in many cases of adminstrative ones in addition--were posted throughout the kingdom and constituted a workable hierarchy of courts even in sections where circumstances made actual accomplishment fall short. (14) Districts were under the jurisdiction of adelantados mayores, of merinos, of adelantados menores; cities under that of alcaldes mayores and later of corregidores. Pesquisidores were sent out to report on their achievement, and, at the expiration of their office, the investigation called the residencia was held, making them answerable in a court to any charge of miscarriage of justice. It is not necessary to examine the functions of each of these officials; it is enough to know that they received their powers from the crown and that all cases, both original and appealed, criminal and civil, came under the jurisdiction of one or another of them. Alfonso X established the order of appeal and set down the duties of the officials--both pieces of legislation, like so much of that monarch's work, to fructify after his death. Alfonso XI made it easy for complaints of the people against excesses of the officers and abuses of justice to reach him, and he strengthened the system by lengthening the

tenure of office for city officials.

Henry II, second sovereign after Alfonso XI, in the year 1371 at a meeting of the cortes of Toro, created an audiencia or chancilleria--both words are used in the order creating it--composed of seven oidores or judges, three of them bishops and four lawyers, to hear cases in the court of the king. It was to meet three days a week, and from its decisions there was to be no appeal.[15] John I, at Bribiesca in 1387, raised the membership to eight oidores of whom three were to be prelates. It was to spend three months each in Medina del Campo, in Toledo, in Madrid and Alcalá. In 1390,[16] it was fixed at Segovia, but, in 1395, it was again changed to Valladolid.[17] Henry III had trouble with it and dismissed all except one oidor who heard cases as a judge until 1407, when the regents of John II reestablished the audiencia.[18] After John II came of age he provided, at the meeting of the cortes in Madrid in 1419, and in Palenzuela in 1425, that a certain number of oidores should be in continual attendance "because often there was but one or two." In 1433[19] it was divided into two main salas, the oidores to hear civil cases and the alcaldes to hear criminal cases.

In 1489, a little more than a hundred years after its first establishment, the Catholic Sovereigns gave

it a definite organization. They gave it a president; for civil cases, four salas, with four oidores in each sala, and a fiscal, together with many minor officials; for criminal cases three alcaldes, a fiscal, and minor officials. They fixed its residence in Valladolid and called it a chancillería because of the fact that the chancellor affixed his signature to decisions. In 1494 the sovereigns created a second chancillería, for the territory south of the river Tagus. This was set up at first in Ciudad Real, but in 1505 moved to Granada. The difference between a chancillería and an audiencia was merely one of hierarchy. During the 16th century, there were established audiencias of Sevilla, of Galicia and of the Canary Islands, and these consisted of a regent who corresponded to the president of the chancillerías, and eight oidores for civil cases, and four alcaldes for criminal cases.

These five and those that were set up in Spain and the near-by islands in the early part of the eighteenth century were created as a law court of last appeal for both criminal and civil cases, and all the alcaldes and judges of the realm were placed under orders to obey and fulfil whatever mandates the oidores issued. Sessions were held daily at specified hours, and the public was admitted one day a week. Saturdays were

devoted to the suits of the poor, and for these lawyers were furnished without cost. Each case had to be completed before another could be opened, and dispatch and brevity were recommended by royal decree. A vote of the majority was required to pass any decision, the president voting as one vote in whichever sala he was presiding.

The function of the audencia was primarily judicial but in a few situations extra-judicial powers belonged to it. It was permitted to requisition armed forces in the enforcement of its sentences. It could issue orders for them to captain-generals and to the cavalry. Also, whenever inhabitants of a city appeared, accusing members of the nobility of disturbing the peace of the city, the audiencia could use arms, if necessary, to force such nobles to leave the city and present themselves before the throne. It had some powers of the executive in forcing a treaty of peace between the noblemen who owned fortresses in cities and the concejo or governing council of the city. It can be seen that this assumption of semi-executive powers was the logical outgrowth of cases of oppression that came up before it as a tribunal of justice.

Thus, as a high court, in Spain the audiencia took the place of the royal presence as the person of last

appeal, and by the hierarchy of courts that it controlled, it crowned and preserved the unification of judicial procedure which had taken centuries to accomplish.

This is the audiencia of which the new world, grown too complex for control by individuals, made use. In the colonies it was invested with additional responsibilities and new functions because the great distance between the two continents made it imperative that agents of the crown in the colonies should have the power to act of their own jurisdiction in as varied situations as possible. The audiencia was both the instrument with which the Crown overcame unnecessary delays in dispensing justice, and the check it used upon the powers of the viceroys. But it was not the Spanish body in the form which we have just seen it reach that the Crown used to accomplish their ends, but rather this body converted by the political, social, and economic conditions of Hispaniola into a distinct colonial audiencia; and this latter we have called the most lasting gift made to Hispanic American civilization by the pioneers of Hispaniola.

NOTES ON THE RISE OF THE AUDIENCIA

(1)	Altamira	Section 60	
(2)	Ibid.	134	
(3)	Ibid.	120	Merriman I pp. 236-238
(4)	Altamira	144,148,174,177	
(5)	Ibid.	191	
(6)	Ibid.	451	Merriman I pp. 179-186
(7)	Altamira	452	
(8)	Ibid.	450	
(9)	Ibid.	203	
(10)	Ibid.	202	Merriman I pp. 188
(11)	Altamira	454,455	Merriman I pp. 239-244
(12)	Altamira	456	
(13)	Ibid.	442,444	
(14)	Ibid.	285,294,442	
(15)	Ibid.	445	
(16)	Ibid.	445	Also Colmeiro and Dávila
(17)	Ibid.	445	
(18)	Ibid.	445	
(19)	Merriman I	231	
(20)	Altamira	582	Merriman II pp. 122-124

THE AUDIENCIA OF SANTO DOMINGO

The Audiencia of Santo Domingo was formally established in 1526 by Charles V, but such a body, bearing even the name Audiencia, had been virtually in operation for the ten previous years and had been in process of development for five years before that. A tribunal of three royal judges was set up in 1511 to act as a check on the governor of Hispaniola.(1) The document in which they are first mentioned is dated October 5, 1511, and is in the archives of the Duke of Veraguas.(2) It appears to be a rough draft of a treaty between Admiral Diego Columbus and Ferdinand V. The heading of it is, "The creation of an audiencia in Santo Domingo, the first established in the Spanish dominions of America." There are twenty-six clauses to this document, and it provides for an audiencia on practically the same basis as is given in the Code of the Indies under date of 1526.(3) In the same collection of manuscripts,(1) also under date of October 5, 1511, there is a cedula of Ferdinand's creating an audiencia in Santo Domingo, to which are appointed three lawyers as appellate judges. This document is signed by the chancellor and four members of the King's

council. The judges arrived in Santo Domingo before the end of the year, but they were not spoken of as an audiencia inspite of the fact that in his cedula, it is forbidden to anyone of them to dispense justice without the concurrence of at least one of the other two. Las Casas called them appellate judges and stated that "they were later made oidores of the audiencia." The Hieronymites referred to them in the one and the same document, both as appellate judges, (jueces de apelación) and as oidores. In 1518 the procuradores, or city representatives, from the whole of the island, met in convention with the Hieronymites and drew up petitions to the crown among which were the following: that the audiencia be reestablished; that, in the event of its reestablishment, the governor be made its head, and it be invested with sufficient authority to act without awaiting instructions from Spain; that the procuradores be allowed to meet without interference of the governor or of the audiencia; and that the audiencia be visited from time to time. In 1520, a number of letters to the Emperor showed that the audiencia had been functioning, had been suspended, and was now reestablished. One, signed by the treasurer and two other officials, thanked Charles for the permission he had granted

for three suspended judges to return to positions in the audiencia, and assured him that the island would come to life with the reappearance of the royal tribunal. Another, from Figueroa, chief justice of the island, stated that he, as president, with two other lawyers, had reestablished the audiencia, and asked that he be allowed to live in the casa de contratación of Santo Domingo in which the reception hall and dining room had been previously used by the audiencia. In another, a couple of months later, Figueroa asked Charles why he neglected his kingdom, why he had not written in answer to a petition that obedience to the audiencia be enforced; while others to the Crown, from Figueroa and from the treasurer and other officials, mentioned the audiencia as functioning in 1520, and presenting problems of one sort or another. One document was from the audiencia itself, on the subject of exploration and conquest. Thus, it is clear that Ferdinand took steps to establish an audiencia in 1511, but that for some reason his appointees came as appellate judges instead of oidores. However, their instructions to act together as a court made them tantamount to an audiencia, and they enjoyed also extra-judicial rights almost from the beginning of

Diego's incumbency, because Ferdinand's policy was to curb the power of the Columbus family at every turn. From 1516 to 1519, when the Hieronymites took so large a share in the management of the colony, the sphere of the audiencia was limited to the judiciary, and this was taken away from them upon the suspension[6] of the judges during these years. Gomara stated in his history that the appellate judges became oidores of the audiencia after the return of the Hieronymites, but he was referring to its reestablishment in 1520.

The exact year of its institution is important only to show at what an early date Hispaniola was ready for this formal instrument of government. So much formality and dignity was attached to the audiencias in Spain that the members were distinguished by long togas, and whenever they went to the cathedral church in a body, four or six canons received them at the door and escorted them back to it at the close of the service.[7] The creation of an audiencia for the new world was evidence that not only did Hispaniola regard itself as having outgrown the status of a pioneer settlement, but even Spain so regarded it. On the other hand, the acquisition of more complex machinery of government hastened the

development of the island itself into a stable colony and enabled it to endow new colonies with forms of government suited to their needs.

The Code of the Indies gives us the responsibilities, duties, and restrictions of the audiencia based on acts of 1526, 1583, 1591, and several of the seventeenth century, but it is uncertain how much was in force as early as 1511 or even 1526. However, it is reasonable to suppose that all that is concerned with its form and with its judicial duties applied from the beginning, because, as we have seen, the audiencia as a court was imported from Spain, it being mainly its functions in war and government that were of colonial growth.

The importance of the audiencia in the new world was great. Miguel Pasamonte, treasurer of the colonies in the second and third decades of the sixteenth century, described it as the tribunal that represented the person of the King; such it was in Spain, and such it was when amended in the code, where the twelve audiencias[8] then in existence were subordinated to the council of the Indies, but, in conjunction with it, were described as representing the royal person.[9] Viceroys were instructed to write to audiencias as to colleagues,[10] respectfully and with no trace of superiority to

~~by~~ Audiencia and viceroy, alike, enjoyed the privilege of direct approach to the King.(10)

The audiencia was composed of a president and a varying number of judges and other officials.(11) The president was the governor,--later, in Mexico and Peru, the viceroy,--or the captain general of the army, or one of the oidores, usually the oldest.(12) There were certain rights that belonged to the governor or viceroy only as president of the audiencia, such as the power of appointment, the possession of encomiendas, and the distribution of royal patronage.(13) The governor of Hispaniola, Diego Columbus, was not named president because, as has been said, the King planned the audiencia as a check on him and his successors; but experience showed that two different people could not be given so much administrative power as these two officers ~~had~~ without friction and inefficiency. So later, the two offices were vested in the same person, but his prerogatives as president were made commensurate with the dignity of the audiencia, and in all cases, with the possible exception of the viceroys of Peru and Mexico, the administrator of the district had more power and importance as president of the audiencia than as governor.

The act of 1526 required,[14] in addition to the president, four judges, a fiscal, an alguacil mayor, a vice chancellor, a secretary, clerks, and minor officers.[15] The judges were endowed with a double function, as oidores they heard appeals in civil suits, and as alcaldes del crimen they heard appeals in criminal cases, besides sitting at first hearings of certain civil and criminal cases. In some of the larger audiencias of the late sixteenth and seventeenth centuries, the oidores were distinct from the alcaldes, and the number of each was up to ten or more.[16] The number of the oidores of Santo Domingo changed with circumstances.[16a] In the beginning, there were three; in 1520,[17] four, including the president, but one of them had to be absent most of the time visiting other settlements, or adjudging disputes in distant places; towards the end of the time covered in this study, in 1539,[18] there were three. When one of these three died, five lawyers wrote to the Crown or King for more oidores, stipulating that they be married men, neither greenhorns in law nor grafters in politics. The same year the president, Bishop Fuenmayor, asked for additional oidores,[19] pointing out that only he and one other were left, both of whom were frequently ill. The

Crown must have made the appointments, for two years later, the same Bishop, aged by cares, wrote asking for release from his duties, since he was no longer able to fulfill them on account of his quarrels with the other three oidores.(20) The Crown endeavored to choose as oidores, able, responsible, and honest men,(21) and it made their term of office for life. It threw further safeguards around justice by ruling, in acts of the late sixteenth century, that oidores could not be natives of the provinces of their jurisdiction, and that they should not marry while in office, and by forbidding their children to marry within their districts.(22)

The days on which the audiencia was to sit, the length of their session, and the business of the day, were all specified in the law.(23) They met every day in the week, for long sessions. They had practically no leisure. Different days were assigned for hearing cases of different categories. Two days a week, for example, were set aside for cases arising out of difficulties with the Indians, and every Saturday was devoted to the suits of the poor. Attendance and punctuality were enforced,(24) and when Philip II made obligatory a clock in the sala de audiencia, he was doubtless concerned with

the perennial tendency to shorten the working day from both ends.

The first colonial audiencia had jurisdiction over the entire new world.(25) Santo Domingo was the center of colonial government from its foundation in 1496, until the second decade of the following century when Cortes in Mexico and Pizarro in Peru gained practical dictatorship in their respective sections. The embryo audiencia of 1511 gradually encroached upon the power that the Crown begrudged to Diego Columbus, and, after 1519, the president of the audiencia dealt directly with the Crown on all questions of policy that concerned the colony.(26) As to the administration of justice, from 1511 up to the formal establishment of the audiencia of Santo Domingo by act of Charles V in 1526, all cases appealed from minor courts, even in the sections under the political authority of the viceroys or of other governors, were heard by the audiencia as then in existence. This act of 1526 lessened the territorial extent of their jurisdiction, assigning to it no more than the northern part of South America, i.e. Tierra Firme, Venezuela, Nueva Andalucia, and the Provincia del Dorado, (the islands of Cuba, Jamaica, and Porto Rico), and the

smaller islands that had been governed by lieutenants of the governor of Hispaniola, together with the settlements that Ponce de Leon was making on the mainland of what is now the United States.(27) Later, more territory was taken from it, as new audiencias were instituted. The remainder though much less than the colonies of Spain at that time, was vast, and had to be divided into judicial districts under corregidores and alcaldes. Letters to the Emperor showed of how steady a growth were the functions of the audiencias and how each new step was taken only by authorization from the crown, and in response to a new need. In 1520, for instance, the audiencia wrote to the Emperor that appeals from Tierra Firme(28) belonged to the audiencia of Santo Domingo, and should be referred to them through the cancellation of the permission given by Ferdinand to Pedrarias to settle appealed cases himself. "We ought to review these cases wrote the oidores," and need the authority to do so."(29) In the same year, they wrote asking that a prompt answer be sent to their question as to whether the audiencia could send an oidor to see under what conditions pearls were being gathered on the coast of Tierra Firme. Here the sanction asked was for investigation rather than for juris-

diction over appealed suits. It was almost impossible in new, not yet fully organized colonies to draw the line between judiciary and administrative spheres, for investigation that followed from particular cases involving, for example, the right to gather pearls, or the right to enslave Caribs, had to end in a decision, the consequence of which was political action.(30) As another instance of the growth of the powers of the audiencia, Ayllon, one of the oidores, went to Yucatan in these early years to straighten out squatter rights, and to Mexico to legislate between Cortes and Narvaez, and the report of this latter experiment lamented that the audiencia lacked sufficient soldiers to make its interference effective.(31) Thus, the jurisdiction of the government at Santo Domingo underwent a number of changes. Almost up to 1511, the viceroy and his successors, directly or through lieutenants, had unrestricted political control, while in the judiciary, all appealed cases were sent to Spain. Then appeared the embryo audiencia with jurisdiction over all appealed law suits, even in Mexico and Peru, and a gradually acquired power in the government of the sections under the rule of Hispaniola; finally, by the act of 1526, the insti-

tution of the Audiencia, with its territory curtailed and its extended powers legally established.

The audiencia of Santo Domingo was of the same power and authority as those of Spain, governed by their laws and ordinances is so far as possible.(32) And when there was a difference, it lay in allowing to Santo Domingo much that was reserved in Spain to the supreme council:(33) for example, resistance to new titles, break-downs of justice in minor courts, dismissal of royal jurisdiction, etc. It was the highest judicial authority in America; the judgment of the audiencia was final in all cases except those that involved more than 10,000 gold pesos.(34) The president did not vote on judicial matters.(35) The oidores were appointed annually in turn to various judiciary duties, such as probate court work, ecclesiastical cases, etc., and these came before their administrative duties.(36) Appeal could be made to the body of the audiencia for reversal of the decision of an individual oidor, or even of the viceroy himself.(37) It had impeachment rights, for it could sit in judgment on the acts of viceroys and presidents, and could, by vote of the whole, depose them.(38) It had power to take residencias of all office holders except viceroys and superior justices,(39)

while the oidores themselves were subject to residencias if ever they were promoted to more important audiencias.[40] As oidores, the members of the audiencia heard only appealed civil cases, but as alcaldes del crimen they heard appealed criminal cases and the first hearing of certain cases both criminal and civil.[41] The entire body signed all decisions and in the administration of justice they were completely independent of the viceroy.[42]

As to the extra-judicial powers of the audiencia it had such in both military and administrative spheres, though less in the former than in the latter. In the absence of the captain-general it was in command of military operations.[43] The president had the responsibility of informing the crown of needs for defense, forts, arms, equipment, etc.[44] An oidor was auditor of military expense and another was in charge of contraband.[45] Several letters of the president and oidores in 1541 were devoted to the trouble Hispaniola was having with the corsairs and contained recommendations as to military action.[46] But more important was the power over the army that was proper to their primary, judicial function, namely the right to require the army to enforce their[47]

decrees, if need arose. It was natural for them to use an armed band in straightening out difficulties in the lands under exploration, but it sometimes happened that they were not able to draft enough men to make armed interference effective, as when they tried to assist Cortes in maintaining his rights in Mexico against Velasquez, lieutenant governor of Cuba. The same thing occurred later, in 1532, when Louis Columbus was governor. There was an Indian chief, named Henry,(48) whose youth had been spent in the Franciscan monastery of Santo Domingo, and who as leader of his tribe objected to excessive employment by an encomendero. He took the case to court and received no redress, so he withdrew to the mountains and refused to deal with the white man. For upwards of two decades, ambassadors tried without success to get him to obey the law of encomiendas.(49) The audiencia at one time sent an armed band of eighty against him, and, again, when Isabella, wife of Charles V, sent a general from Spain to proceed against Henry the audiencia called a meeting of the householders, and together with them and with Louis Columbus, the governor, held a council of war. These incidents are enough to show that even into military affairs the audiencia carried its responsibilites and

powers.

In the realm of administration the audiencia was a distinctly colonial institution. Before its formal establishment in 1526, it dealt, as we have seen, with all matters with which governmental authority might properly deal, for circumstances made the execution of a judicial decision virtually an administrative act. For example; the Hieronymites (50) had instructions to set free as many Indians as seemed possible, especially the caciques. The encomendero over a certain cacique upon appeal of his case to the audiencia was forced to set the cacique free. This decision was but a step away from executing the instructions directly, a step which the audiencia soon took. In 1521, Esteban de Pasamonte (51) wanted the Indians of an encomendero who had died. The settling of his estate came to the audiencia who decreed that the Indians were free, and that, since the King wanted them to live like Christians and receive wages for their labor, the only way Pasamonte could get them was to hire them; and Figueroa, president, instructed officers to see to it that, in case they were hired, they were paid a fair wage. In a land where the relations of white man to red man represented a considerable

portion of the material of government, a ruling of this sort was essentially political. Diego Columbus complained occasionally of what he considered usurpation of power, and with little wonder, for Figueroa, in 1520,[52] wrote to the Crown saying that he was very busy with audiencia, with matters of government, with the question of armament, and, finally, with slavery. Figueroa held three offices, repartidor of Indians, alcalde mayor, and president of the audiencia, and his letter did not specify in which capacity he had to do with the above affairs, but, with the possible exception of the last, that is of slavery, they were more proper to him as president than as either other officer, and if, indeed by slavery he meant of the negroes rather than of the Caribs, then his entire occupation as referred to in the letter, was as president. The embryo[53] audiencia, after its reestablishment, conducted investigations and made recommendations to the Emperor. It collected information about the president, Figueroa, who was accused of disturbing the royal jurisdiction, it wrote disapproving Diego's lack of severity with pirates, it petitioned for more negroes for the island, it submitted statistics on the present state and the possible future of the sugar industry. It constructed Indian villages. It paid salaries. It appointed

governors of other colonies, and sent other officers to distant places. Las Casas blamed it for an attack on the Cannibal Indians of various islands.

In the act of 1526, the part in government assigned to the audiencia was, first, to give advice to the governors on hard cases of government when asked to do so in acuerdos or conferences.(54) If there was a dispute as to whether the matter was of government, the audiencia reviewed the case before sending it to Spain, but if it was finally so considered then the audiencia was limited to gathering information and giving advice.(55) Secondly, if the governor was ill or absent for a long stretch of time, or if he died, and no successor was yet appointed, the audiencia was responsible for everything. Later in the century, the general administration of the colony was assigned to the audiencia in conjunction with the viceroy or the governor general. Innumerable instances in the Archives of the Indies show how, from 1526 on, the audiencias,-that of Santo Domingo, but still more those of other sections,--gathered to themselves governmental functions in much the same way as the embryo audiencia did in Hispaniola from 1511 to 1526, until at the end of the century it was a part of the government.(56) The

body that was planned as a check on any too ambitious governor grew until it became co-adjutor with him.

Solórzano, in his Política Indiana, wrote that the audiencias were of great benefit to all subjects of the Crown, whether white men or red, but of most value to the poor, to whom they were as an inpregnable castle where each was given what was his own. They were unique and distinctly Spanish, and they partook of the spirit of democracy that underlay all Spanish institutions even in their moment of greatest centralization, and they were able, here in this vast new world, to administer justice with impartiality, to assist in military affairs with restraint, and to share the responsibilities of government with wisdom.

NOTES ON THE AUDIENCIA OF SANTO DOMINGO

(1) See references on note (40) of chapter of this study on years 1500-1511.

(2) The Duke of Veraguas, title given to Louis Columbus, son of Diego, at the time when the Crown abrogated his title of Admiral of the Indies.

(3) Book II.

(4) D. I. del archivo. Vol. I. p. 360

(5) Ibid. 413-422.

(6) This suspension is mentioned in documents cited in note (5), but the reason for it is not given.

(7) Nueva Recopilación Bk. V. Tit. XI.

(8) D. I. del archivo. Vol XXXIV. p. 5 et seq.

(9) Recopilación Bk. II. Tit. XV. law 1.

(10) Solórzano Bk. V. Ch. 34; Moses I p. 270

(11) Recop. II, XV, 2.

(12) Ibid. 2 and 57.

(13) Moses. Vol. I. p. 267.

(14) Recop. as cited in note (11).

(15) Solórzano Bk. V, ch. 3.

(16) Herrera. Introduction ch. 9-22.

(16a) Herrera. Introduction ch. 5; Las Casas Bk. II. ch. 68.

(17) D. I. del archivo I. p. 416 et seq.

(18) Ibid. pp. 557-559.

(19) Ibid. p. 580

(20) Ibid. following pages.

(21) Oviedo. Book IV.

(22) Solórzano Bk. V. ch. 4 and 10.

(23) Recop. II. XV. laws 81 and 82.

(24) Ibid. law 20.

(25) Herrera. Introduction ch. 5.

(26) D. I. del archivo. Vol. I. contains the letters of Figueroa, the president, to the Crown. Most of them have already been cited.

(27) Herrera as cited in note (16) above.

(28) D. I. del archivo I. p. 413.

(29) Ibid. p. 415.

(30) Ibid. pp. 420-509.

(31) Ibid. p. 417.

(32) Solórzano, Bk. V, ch. 9.

(33) Ibid. ch. 10-20.

(34) Recop. II. XV. 2,

(35) Ibid. 30.

(36) Solórzano Bk. V. ch. 49-60.

(37) Ibid.

(38) Ibid. 81.

(39) See note (14) to chapter of this study on years 1500-1511.

(40) Solórzano Bk. V. ch. 10.

(41) Ibid. 5.

(42) Ibid.

(43) Recop. II. XV. 43 and 58.

(44) D. I. del archivo. I. p. 546 et seq.

(45) Solórzano Bk. V. ch. 52.

(46) As in (44) above.

(47) Recop. II. XV. 43.

(48) Herrera Bk. V. ch. 4-8.

(49) The Crown finally accorded treaty rights to Henry and allowed full freedom to his people.

(50) See references under note (1) of ch. of this study, A Turbulent Decade.

(51) D. I. del archivo I. p. 436.

(52) Ibid. I. p. 416 et seq.

(53) Ibid. I. pp. 303-497 already cited in sections.

(54) Recop. II. XV. 35; Solórzano Bk. V. ch. 28-29.

(55) Recop. II. XV. 58; Solórzano Bk. V. ch. 42.

(56) D. I. del archivo Vol. I., XXIX., XXXII.

CONCLUSION.

The story of Hispaniola after the first quarter of the sixteenth century is that of an eldest daughter eclipsed by her younger sisters even as she herself was settling down to the unspectacular job of devoting herself entirely to her own home.

In 1527, the Crown created the audiencia of Mexico, and from that time to the end of the century, eight other American audiencias were formed. The Audiencia of Bogotá or Sante Fe took over in 1550 the jurisdiction of Caracas, and Cumaná in South America and the islands of Margarita and Trinidad, leaving to Santo Domingo only the four greater Antilles, Florida and the shore of the Gulf of Mexico. Not all the audiencias followed that of Santo Domingo in details; the personel of some, especially of Mexico and of Lima, was much more numerous, their work different in so far as the problems to be solved varied, but their functions were of the same scope, judicial, military, and administrative. However, Santo Domingo always retained a remnant of the prestige that belonged to it in its first days, and when Pizarro found civil strife beyond his control, he appealed to it along with Mexico and Guatemala to send special envoys to help the au-

diencia of Lima handle the situation.

Hispaniola itself became mainly a great sugar producing section. Its racial problems shifted from the Indian to the negro. The new Spanish emigration, for the most part, went to the mainland, while a great many Portuguese gained permission to settle in Hispaniola. Santo Domingo shrank to the size of a large town, and within the three sides of its wall, which had been built in the days of its preeminence, were groves and open spaces populated only by memories and the ghosts of hope unfulfilled. But it still retained its charm, and an oidor of its audiencia writing to his sovereign in 1564 a report on depopulation and taxes,(1) lingered affectionately, on a description of the natural beauty of its site and its superb buildings, "each one a fortress, made out of the best building stone in the world." The householders were no longer mostly Castilian gentlemen,--though some few there were of these yet besides the office holders,--but Spaniards of humbler lineage, Portuguese, and negroes, while the presence of negro slaves moving here and there gave the city the appearance of being, to a large extent, a negro settlement.

Nature, however, had gifted Santo Domingo with a harbor in the center of the Caribbean with facilities for the easy handling of freight, and of this,

no law nor shift in interest could deprive it, and so, while but three or four ships a year came directly to the city from Seville, all the ships that formed part of the semi annual sailing squadrons, the fleet in the Spring and the flota in the Fall, assembled in this harbor and kept living the flame of romance and adventure. The Crown had been pressed by Mexico, Peru, and Bogotá to pass a law that goods for other parts of the Indies should not be bought through Santo Domingo and this law killed the business that made Santo Domingo a big city, and reduced it to the status of a big town and a small capital.

But a big town, even when haunted by a falling curve in business statistics, had its role in the drama of history. In 1530,(2) Santo Domingo sent from Hispaniola 10,000 pesos of gold and 50 measures of pearls as the fifth due to the Crown of the annual harvest of the island in gold and pearls. In addition, it sent quantities of silver, iron, talc, antimony, sulphur, jasper, white marble, mahogany and mineral salts to be sold in Europe. In 1540,(3) the business agent of a German bank on his way to Venezeula where the banking firm enjoyed special privileges, stopped in Hispaniola and wrote to the Emperor for permission to abandon the Venezuelan enterprise, to remain, instead, in Hispaniola to develop there the copper industry. The sale of all

these natural products together with the shiploads full of sugar, hides, and reeds, could not but make comfortable fortunes for the population of the island, and from Echagoyan, the oidor quoted above, we learn that considerable return was in the form of merchandise, the resulting trade making great revenue for the cities of Cadiz and Seville.

The service that Santo Domingo and the rest of Hispaniola rendered the Crown and the colonies did not cease even with the development of the audiencia, for it was the buffer in the struggle with piracy. As early as 1520,(4) English, French, and Genoese traders and oriental corsairs discovered that the quickest way to gather gold was from an east bound Spanish galleon, and from that time on for nearly three centuries, home governments winked at or smiled on the theft of Spanish goods on the high seas. The correspondence of the audiencia from 1520 to the end of the period under study(5) was concerned, in large measure, with reports of piracy and requests for better means of protection for ships and for the island itself, as well as more ships with which to chase corsair or English or French or Italian merchant vessels, as the latest need might be.

So passed in Hispaniola and its fascinating capital, fifty years, a half century that began with the

first settlement of white men in the new world and ended with formulation and promulgation of laws that were designed to give to the Indian in a Christian civilization the freedom and equality of rights that had been the purpose and ideal with which the Catholic Sovereigns had sanctioned colonization of the island. It would have been a splendid climax had these laws been enforced, but, as we have pointed out, these so-called New Laws of 1542 were withdrawn because of the violent opposition of the miners of Mexico and Peru to them because they contained clauses abolishing the repartimiento. But the mere formulation of them shed glory upon the sovereign (6) who wrote them and the colony whose members urged them.

We have watched Hispaniola grow from a single settlement of a few men to a colony of seventeen cities, including a large and busy capital that handled all of the government and much of the business of the new world. We have seen its population meet the vicissitudes of pioneer life,--war, disease, famine, want, loneliness, and discontent. The Indian population was here first divided into repartimientos, but from here also came the first attempt to abolish them. On this island, the first churches were built, and the first charitable institutions were founded to serve, alike, white man and Indian. Here the Church developed its organization for mis-

sionary work among the Indians, and at the close of the period under study it is safe to assume that there were few, white, or red, or black, not a part of it. We have followed the progress of government from a palatinate in which Christopher Columbus possessed extraordinary rights to a bureau composed of a council, a casa de contratación, a governor and an audiencia. We have noted that the functions of these various agencies, especially those of the audiencia, were in response to the peculiar needs of colonies so far distant from the mother country. Most of the situations wherein these needs appeared for the first time we have seen arise in Hispaniola, and we know that the legislation that resulted from the Crown's effort to meet these situations was tested, and either enforced or rejected, by the colonists of this island.

Through Hispaniola, as through a lens we have looked at Spanish American civilization in the early years of its life, and we have discovered a government not imposed by an imperial minded mother country but allowed to develop within the colonies themselves to the end that both natives and colonists might be served and that both might live, side by side, as they have continued to do up to the present, in the enjoyment of equal privileges both spiritual and material. In this first half of the sixteenth cen-

tury, on a little island in the middle of the Caribbean, we have traced almost to its maturity the civilization that prevailed in all Hispanic America for three centuries and constituted the greatest and most democratic colonizing scheme yet offered to us by history.

NOTES ON CONCLUSION

(1) D. I. del archivo. I. pp. 9-36

(2) Ibid. 478 et seq.

(3) Charles V had given the natives their special privileges.

(4) D. I. del archivo. as cited in (2)

(5) Ibid. I pp. 565-580

(6) Charles V

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